

(29,859)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 169

STANDARD OIL COMPANY OF NEW JERSEY, AS OWNER,
ETC., OF THE STEAMSHIP "LLAMA," PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT

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[fol. 1] **IN UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY**

In Admiralty

STANDARD OIL COMPANY, Libelant,

vs.

THE UNITED STATES OF AMERICA

DOCKET ENTRIES

1919.

- May 5. Libel for Contract. \$163,704.53.
- " 5. Stipulation for Costs.
- " 5. Citation issued, returnable May 27th, 1919.
- " 7. Citation returned served Charles F. Lynch.
- " 23. Appearance—Charles F. Lynch, U. S. Attorney.
- " 26. Stipulation for extension of time to file answer.
- " 28. Affidavit of Service.
- " 23. Answers. Charles F. Lynch, U. S. Attorney.

1920.

- Mar. 12. Order of Substitution.

1921.

- Feb. 3. Trial.
- Swg. 1 witness.
- July 30. Memorandum.
- " 30. Libelant's depositions (1 Book).
- " 30. Respondent's depositions (1 Book).
- " 30. Libelant's exhibit's (3 Log Books and 1 folder).
- Aug. 25. Bill of Costs.
- Sept. 23. Final Decree.
- " 23. Costs taxed.
- " 23. Docket fee.
- " 23. Enrolling.

[fol. 2]

1922.

- Jan. 5. Notice of Motion for Order amending decree, acknowledged.
- " 16. Order opening final decree.
- Feb. 23. Notice of Appeal.
- " 23. Petition and Order allowing Appeal.
- " 23. Assignments of Error.
- Apr. 20. Amended Assignments of Error.

A true copy.

George T. Cranmer, Clerk (Seal.)

[Title omitted]

LIBEL—Filed May 5, 1919

First. At all the times hereinafter mentioned the libelant Standard Oil Company was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, having an office and place of business in the City of Bayonne, in the State of New Jersey, and was and still is a resident of the District of New Jersey.

Second. At the time herein mentioned the libelant was the owner of the American steamship Llama, which vessel was registered from the port of New York. The said vessel was built in the year 1890 at Newcastle-on-Tyne, England, of steel.

She was a steamship having two decks, three masts, a plain head and an elliptic stern. Her register length was 318.5 feet, her register breadth was 42 feet, her register depth was 29.5 feet. Her gross tonnage was 3,189 and her net tonnage was 2,011.

Third. On or about the 8th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, pursuant to the Act of Congress of September 2, 1914, entitled "An Act to authorize the establishment of a Bureau of War [fol. 4] Risk Insurance in the Treasury Department," and for a valuable consideration, to wit, a premium then and there fixed and agreed upon, duly made, issued and delivered its certificate of insurance whereby it insured for the libelant Standard Oil Company the steamship Llama, her hull, machinery, boilers, equipment, stores, etc., for one hundred and fifteen thousand dollars (\$115,000), the agreed value of the steamer Llama, at and from New York to Copenhagen and return to the United States, with privilege of coaling in Scandanavia and with privilege of a port or ports of call for admiralty instructions, against loss or damage by the risks of war and against other perils in said certificate of insurance mentioned. By the terms of the said certificate it was agreed that in case of loss payment would be made in funds current in the United States to the Standard Oil Company or its order.

The certificate provided that the respondent does make insurance and cause the libelant to be insured in and during the voyage aforesaid, and further provided as follows:

"Touching the adventures and perils which the insurer is contended to bear, and does take upon itself, they are of men-of-war, letters of marque and counter-marque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

A copy of said certificate is hereto annexed, marked "Exhibit A" and made a part of this libel.

Fourth. At the time the certificate was issued and at all the times mentioned herein the steamship Llama was an American steamship entirely and solely owned by the libelant Standard Oil Company and registered from the port of New York.

[fol. 5] Fifth. The libelant in due course paid the respondent through the Bureau of War Risk Insurance the agreed premium for the insurance aforesaid, which said premium was duly accepted by the respondent.

Sixth. Thereafter and on or about the 14th day of October, 1915, the steamship Llama, being then tight, staunch, strong and in all respects seaworthy and properly and fully manned, equipped and supplied, sailed from New York for the port of Copenhagen, Denmark, with a cargo of gas oil, mineral colza oil, and dry glue, on the voyage described in the certificate of insurance aforesaid.

Seventh. Thereafter and on or about the 29th day of October, 1915, and when the said steamer Llama, in the due prosecution of her said voyage, had arrived at a point about 400 miles westward of the Orkney Islands, she was stopped, taken at sea, seized and detained by a British man-of-war, the same being an armed vessel of the British Navy.

The commander of the said British man-of-war put one of the officers of the said man-of-war with a prize crew on board the Llama and took entire charge of the steamer and her cargo and ordered the Llama to proceed to Kirkwall. Thereafter the Llama, although operated by her officers and crew, was in charge of the British naval officer, who selected the course on which she should proceed and took entire charge of the vessel and her navigation.

The Llama was forced to proceed, although the usual aids to navigation had been discontinued on account of the state of war existing between Great Britain and the German Empire, and the prevalence of German submarines in the waters in which the Llama was then navigating.

Shortly after the naval officer took charge of the Llama she was turned aside under his orders from the course which she had been [fol. 6] following and which she would normally have followed, and was steered on a course laid down by the naval officer for Noup Head to enter Westray Firth.

On the morning of October 31st the naval officer started the vessel into Westray Firth on a course selected by him, and while proceeding on the course thus selected by the naval officer aforesaid, the steamship Llama, while wholly under the command, orders and direction of the said naval officer and with the naval officer on the bridge and in charge of her and whilst she was proceeding at her full speed of 8 knots, at about 9:07 on the morning of October 31, 1915, struck a reef.

The Llama remained fast on the rocks, although prompt and

efficient efforts were made to float her with the vessel's engines and pumping out oil by the assistance of two torpedo boats. These efforts were continued for two days without success. In spite of said efforts to save her, it became necessary to abandon the Llama, and on or about November 2, 1915, she was abandoned.

The Llama subsequently slipped off the rocks and sank with all her cargo, becoming a total loss. Her freight and all her cargo were totally lost with her.

Eighth. The stranding and loss of the steamship Llama as aforesaid and the loss of her cargo and freight was wholly due to the seizure, restraint and detention of the steamer, as hereinbefore set forth, and her forcible diversion from the usual and customary course which she would otherwise have followed to her destination.

The said capture, seizure, restraint and diversion of the Llama were warlike acts done by the British Government as a belligerent and in prosecution of hostilities between the United Kingdom of Great Britain and Ireland and certain other sovereign states, including the German Empire and the Empire of Austria-Hungary, [fol. 7] and her loss as aforesaid was also a consequence of hostilities and warlike operations within the meaning of the insurance.

At the time the vessel was seized neither the port of Kirkwall nor the part of Copenhagen was a blockaded port and the Llama was not attempting to evade any blockade. The loss of the steamship Llama was therefore due to causes falling within the perils and risks insured by and under the policy and certificate of insurance issued by the Treasury Department of the United States above mentioned, in which said steamship was valued at and insured up to the sum of one hundred and fifteen thousand dollars (\$115,000).

Ninth. The libellant incurred certain expenses in working and laboring in an attempt to save the steamship Llama, her cargo and freight, after said stranding. The nature and amount of these expenses are as follows:

Allowance to the steamship Wico for going to the assistance of the steamship Llama.....	\$2,872.98
Cable expenses incurred in connection with the sinking of the steamship Llama.....	209.75
Wages and maintenance of the members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking.....	271.88
Bill rendered by and paid to the British Admiralty for services in connection with the stranding, £73:13:4 at 4.75.....	349.92
	<hr/>
	\$3,704.53

Tenth. After the sinking of the Llama, and the loss of said vessel, her cargo and freight, and before the commencement of this action, libellant gave to the respondent due notice and proof of the loss as aforesaid, and surrendered to the respondent the said certificate and

demand of the respondent the sum of \$115,000 and \$3,704.53, to [fol. 8] which the libelant had become and was entitled by reason of the premises under and pursuant to the terms of the said certificate. Libelant duly performed all the conditions of the said certificate of insurance on its part, but the respondent has refused to accept the proof of loss and neglected and refused to pay the said sums or any part thereof, and the said sums of \$115,000 and \$3,704.53, aggregating \$118,704.53, still remain unpaid and are now due and owing with interest to the libelant from the respondent.

For a second cause of action, the libelant repeats and re-alleges the allegations contained and the matters alleged in articles first and second of this libel, and further alleges as follows:

Eleventh. On or about the 16th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, pursuant to the Act of Congress of September 2, 1914, entitled "An Act to Authorize the Establishment of a Bureau of War Risk Insurance in the Treasury Department," and for a valuable consideration, to wit, a premium then and there fixed and agreed upon, duly made, issued and delivered its certificate of insurance whereby it insured for the libelant Standard Oil Company the sum of forty-five thousand dollars (\$45,000) upon the freight and advances of the steamship Llama at and from New York to Copenhagen, with privilege of coaling at Scandinavia and with privilege of port or ports of call for admiralty instructions, against loss or damage by the risks of war and against other perils in said certificate of insurance mentioned. By the terms of said certificate it was agreed that in case of loss payment would be made in funds current in the United States to the Standard Oil Company or its order.

The certificate provided that the respondent does make insurance and caused the libelant to be insured in and during the voyage [fol. 9] aforesaid and further provided as follows:

"Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are men-of-war, letters of marque, and counter-marque, surprisals, takings at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

A copy of said certificate is hereto annexed, marked "Exhibit B" and made a part of this libel.

Twelfth. At the time said certificate was issued and at all the times mentioned herein the steamship Llama was an American steamship entirely and solely owned by the libelant Standard Oil Company and registered from the port of New York.

Thirteenth. The libelant in due course paid the respondent through the Bureau of War Risk Insurance the agreed premium for

the insurance aforesaid, which said premium was duly accepted by the respondent.

Fourteenth. Thereafter and on or about the 14th day of October, 1915, the steamship Llama, being then tight, staunch, strong and in all respects seaworthy and properly and fully manned, equipped and supplied, sailed from New York for the port of Copenhagen, Denmark, with a cargo of gas oil, mineral colza oil, and dry glue, on the voyage described in said certificate of insurance. The freight of said cargo was insured by the respondent as aforesaid.

Fifteenth. Thereafter and on or about the 29th day of October, 1915, and when the said steamship Llama, in the due prosecution of her said voyage, had arrived at a point about 400 miles westward [fol. 10] of the Orkney Islands, she was stopped, taken at sea, seized and detained by a British man-of-war, the same being an armed vessel of the British Navy.

The commander of the said British man-of-war put one of the officers of the said man-of-war with a prize crew on board the Llama and took entire charge of the steamer and her cargo and ordered the Llama to proceed to Kirkwall. Thereafter the Llama, although operated by her officers and crew, was in charge of the British naval officer, who selected the course on which she should proceed and took entire charge of the vessel and her navigation.

The Llama was forced to proceed, although the usual aids to navigation had been discontinued on account of the state of war existing between Great Britain and the German Empire, and the prevalence of German submarines in the waters in which the Llama was then navigating.

Shortly after the naval officer took charge of the Llama she was turned aside under his orders from the course which she had been following, and which she would normally have followed, and was steered on a course laid down by the naval officer for Noup Head to enter Westray Firth.

On the morning of October 31st the naval officer started the vessel into Westray Firth on a course selected by him, and while proceeding on the course thus selected by the naval officer aforesaid, the steamship Llama, while wholly under the command, orders and direction of the said naval officer and with the naval officer on the bridge and in charge of her and whilst she was proceeding at her full speed of 8 knots, at about 9:07 on the morning of October 31, 1915, struck a reef.

The Llama remained fast on the rocks, although prompt and efficient efforts were made to float her with the vessel's engines and [fol. 11] pumping out oil by the assistance of two torpedo boats. These efforts were continued for two days without success. In spite of said efforts to save her, it became necessary to abandon the Llama, and on or about November 2, 1915, she was abandoned.

The Llama subsequently slipped off the rocks and sank with all her cargo, becoming a total loss. Her freight and advances and all her cargo were totally lost with her, and said cargo, the freight

whereof was insured as aforesaid, was totally lost by the perils in said certificate of insurance mentioned.

Sixteenth. The stranding and loss of the steamship Llama as aforesaid and the loss of her cargo, freight and advances, was wholly due to the seizure, restraint and detention of the steamer, as hereinbefore set forth, and her forcible diversion from the usual and customary course which she would otherwise have followed to her destination.

The said capture, seizure, restraint and diversion of the Llama were warlike acts done by the British Government as a belligerent and in prosecution of hostilities between the United Kingdom of Great Britain and Ireland and certain other sovereign states, including the German Empire and the Empire of Austria-Hungary, and the loss of the freight as aforesaid was also a consequence of hostilities and warlike operations within the meaning of the insurance.

At the time the vessel was seized neither the port of Kirkwall nor the port of Copenhagen was a blockaded port and the Llama was not attempting to evade any blockade. The loss of the cargo, freight and advances of the steamship Llama was therefore due to causes falling within the perils and risks insured by and under the policy and certificate of insurance issued by the Treasury Department of the United States above mentioned, in which the freight and advances of said vessel were valued at and insured up to the sum of forty-five thousand dollars (\$45,000).

[fol. 12] The libelant would have received as its own property the freight to be paid for the transportation of said cargo, but has been deprived thereof by reason of the loss of said ship and her cargo as aforesaid.

Seventeenth. After the sinking of the Llama and the loss of the said vessel, her cargo, freight and advances, and before the commencement of this action, libelant gave to the respondent due notice and proof of the loss as aforesaid, and surrendered to the respondent the said certificate and demanded of the respondent the sum of \$45,000, to which the libelant had become and was entitled by reason of the premises under and pursuant to the terms of the said certificate. Libelant duly performed all the conditions of said certificate of insurance on its part, but the respondent has refused to accept the proof of loss and neglected and refused to pay the said sum or any part thereof, and the said sum of forty-five thousand dollars (\$45,000) is now due and owing with interest to the libelant from the respondent.

Eighteenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, your libelant prays that process issue against the respondent according to the course and practice of this Honorable Court in causes of admiralty and maritime jurisdiction, and in accordance with the provisions of the Act of Congress of September

2, 1914, aforesaid, citing it to appear and answer all and singular the matters aforesaid, and that the respondent may be condemned to pay the amount of libelant's said damages in the sum of one hundred sixty-three thousand seven hundred and four 53/100 dollars (\$163,704.53) with interest and costs, and that the libelant may have a decree therefor against the United States of America, and that the [fol. 13] libelant may have such other and further relief as in law and justice it may be entitled to receive.

John M. Woolsey, Proctor for Libelant. Office and P. O. Address, 27 William St., Borough of Manhattan, City of New York. Charles L. Cowenhoven, Resident Proctor for Libelant. Office and P. O. Address, 46 Paterson St., New Brunswick, New Jersey.

Jurat showing the foregoing was duly sworn to by F. D. Asche omitted in printing.

[fol. 14]

EXHIBIT A TO LIBEL

No. 2.

Original

No. 1263.

Voyage

The United States of America,
Treasury Department,
Bureau of War Risk Insurance,
Washington, D. C.,

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to Copenhagen and return to the United States, with privilege of coaling in Scandinavia and with privilege of a port or ports of call for Admiralty instructions—

Sum insured, \$115,000

One hundred fifteen thousand dollars upon the Hull, Machinery, Boilers, Equipment, Stores and everything connected therewith of and in good Vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure on the said vessel, etc., as above, and shall so continue and endure until the said vessel, etc., shall be arrived at as above and until she has moored and anchored twenty-four hours in good safety. The said vessel, etc., for so much as concerns the insured, by agreement between the insured and insurers in this Policy, are and shall be valued at \$115,000.

[fol. 15] Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detentions of all kinds, princes, and peoples, of what nation, condition, or quality soever, and all consequence of hostilities or warlike operations, whether before or after declarations of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

In the case of an iron or steel vessel, average payable without deduction of new for old.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said vessel, etc., or any part thereof without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the

Premium, \$3,450. ^{consideration for this insurance by the insured or their assigns, at and after the rate of 3 per cent.}

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

[fol. 16] It is understood and agreed that the vessel insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted by the insured not to sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. DeLanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

[fol. 17] Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assists the operations of belligerents; or if she carries supplies to war vessels of belligerent nations.

Countersigned at Washington D. C., this 8th day of October, 1915.
(Sgd.) J. Brooks B. Parker, Assistant Director.

Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent.
[fol. 18] (Endorsement:) United States of America, Treasury Department, Bureau of War Risk Insurance. Voyage. Standard Oil Company (New Jersey). "Llama." Sum insured, \$115,000; rate, 3%; Premium, \$3,450. Johnson & Higgins, New York City. Effected by Johnson & Higgins. 49 & 51 Wall St., N. Y. Entered 57202 Examined: — — —.

[fol. 19]

EXHIBIT B TO LIBEL

No. 4.

Original

No. 1269.

Freight

The United States of America,
Treasury Department,
Bureau of War Risk Insurance,
Washington, D. C.

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to

Copenhagen with privilege of coaling in Scandinavia port or ports of call for Admiralty instructions—

Sum insured, \$45,000

forty-five thousand dollars upon the Freight and Advances, if any, of the Vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure upon the said freight, etc., as above and shall so continue and endure until the said vessel shall be arrived at as above, and until she has anchored twenty-four hours in good safety.

Touching the adventures and perils which the insurer is contended to bear, and does take upon itself, they are men-of-war, letters of marque and countermarque, surprisals, taking at sea, arrests, restraints and detentions of all kings, princes, and peoples, of what nation, condition or quality soever, and all consequences of hostilities or war-like operations, whether before or after declaration of war. [fol. 20] Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the said freight and advances, or any part thereof, without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been

Paid the consideration for this insurance, by Premium, \$787.50. the insured or their assigns, at and after the rate of $1\frac{3}{4}$ per cent.

Warranted by the insured free from claim consequent upon the loss of time whether arising from a peril insured against or not.

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel, the freight and advances of which are insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted that the vessel, the freight and advances of which are [fol. 21] insured hereunder, shall not sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this

policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent. Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until counter-signed by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detach-[fol. 22] ment of belligerents, or one or more persons who, in the course of the voyage, directly assist in the operations of belligerents; or if she carries supplies to war vessels of belligerent nations.

Countersigned at Washington, D. C., this 16th day of October, 1915.

(Sgd.) William De Lanoy, Director.

Warranted that the goods are destined for the country of the port to which they are insured, and free of claim consequent upon or arising from their ultimate destination being the country of a belligerent.

[fol. 23] (Endorsed:) United States of America, Treasury Department, Bureau of War Risk Insurance. Freight. Standard Oil Company (New Jersey). "Llama." Sum Insured, \$45,000; rate, 1¾%; premium, \$787.50. Johnson & Higgins, New York City. Effected by Johnson & Higgins, 59 and 51 Wall St., N. Y. Entered 57202. Examined: ——. Filed May 5th, 1919, at 2:30 o'clock P. M. George T. Cranmer, Clerk.

[fols. 24-26] COST BOND FOR \$250—Approved and filed May 5, 1919;
omitted in printing

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE EXTENSION OF TIME—Filed May 26, 1919

It is hereby stipulated and agreed that the United States of America shall have thirty days' additional time in which to answer the above-stated cause of action.

John M. Woolsey, Proctor for Libellant. Charles F. Lynch,
United States Attorney, District of New Jersey, Proctor for
the United States of America, by Joseph L. Bodine, As-
sistant United States Attorney.

Dated May 24th, 1919.

[File endorsement omitted.]

[fol. 28] IN UNITED STATES DISTRICT COURT

ANSWER—Filed June 23, 1919

To the Honorable the Judges of the District Court of the United States for the District of New Jersey, sitting in Admiralty:

The answer of the government of the United States of America to the libel and complaint of the Standard Oil Company, against the United States of America, in a cause of contract, civil and maritime, alleges:

First. It believes the facts stated in the first paragraph of the libel to be true.

Second. It believes the facts stated in the second paragraph of the libel to be true.

Third. It admits that on or about the 8th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, for a premium agreed upon, issued a certificate of insurance, a copy of which purports to be annexed to the libel. It demands that said original certificate of insurance be produced at the trial, and for certainty, it begs leave to refer to the said original certificate as stating the terms of such insurance contract.

Fourth. It denies knowledge of the facts stated in the fourth paragraph of the libel, and asks strict proof thereof, if material.

Fifth. It believes the facts stated in the fifth paragraph of the libel are true.

Sixth. It denies knowledge of the facts stated in the sixth paragraph of the libel, and if the same be material, strict proof thereof is demanded.

Seventh. It denies knowledge or information sufficient to form a belief as to each and every allegation stated in the seventh paragraph of the libel, and the said facts are denied, same as herein admitted, [fol. 29] and if material, strict proof thereof is demanded.

It is informed that the Steamship Llama, on or about October 31, 1915, while proceeding through the Westray Firth, navigated by her officers and crew, struck an uncharted rock, and became a loss, but it alleged that the loss of the said steamship and her cargo was not a loss within the meaning of said policy and certificate of insurance.

Eighth. It denies that the loss of the Steamship Llama was due to causes falling within the perils and risks insured by and under said policy or certificate of insurance. It denies that her loss was due to seizure, restraint or detention by the British government, or to the forcible diversion of the vessel from her course, or that the loss was due to warlike acts done by the British government, or was in consequence of hostilities and warlike operation within the meaning of the insurance.

Ninth. It has no certain knowledge of the expenses incurred by the libelant in working and laboring in an attempt to save the said steamship and her cargo and freight after said stranding, and if such expenses are proper items of loss, it demands that the nature and amount thereof be determined by proper proofs. However, it denies that the amount of such expenses are recoverable under the provisions of said policy or certificate of insurance.

Tenth. It denies that the libelant is entitled to recover any moneys under said policy or certificate of insurance.

And further answering the second cause of action stated in said libel, it is alleged:

Eleventh. It admits that on or about the 16th day of October, 1915, the Bureau of War Risk Insurance of the Treasury Department of the United States, for the premium agreed upon, issued a certificate of insurance, copy of which is purported to be annexed to the libel. It demands that said original certificate of insurance be produced at the trial, and for certainty, it begs leave to refer to said original certificate as stating the terms of such insurance contract.

Twelfth. It denies knowledge of the facts stated in the twelfth paragraph of the libel, and if material, demands strict proof thereof.

Thirteenth. It believes that the facts stated in the thirteenth paragraph of the libel are true.

Fourteenth. It denies knowledge of the facts stated in the fourteenth paragraph of the libel, and if material, demands strict proof thereof.

Fifteenth. It denies knowledge or information sufficient to form a belief as to each and every allegation stated in the fifteenth paragraph of the libel, and they are denied, save as herein admitted, and strict proofs thereof demanded, if material.

It is informed that the Llama on or about October 31, 1915, while proceeding through the Westray Firth, under the navigation of her officers and crew, struck an uncharted rock and became a loss. It alleges, however, that the loss of the Llama, her cargo, freight and advances, was not a loss within the meaning of said policy and certificate of insurance.

Sixteenth. It denies that the loss of the Steamship Llama, her cargo, freight and advances, was a loss within the meaning of said policy or certificate of insurance. It denies that said loss was due to seizure, restraint or detention of the steamer, or her forcible diversion from her course, or that her loss was due to warlike acts done by the British government, or was the consequence of hostilities and warlike operations within the meaning of the insurance.

It demands, if material, proof to be made that the libelant would [fol. 31] have received as its own property the freight to be paid for the transportation of said cargo, and that it has been deprived thereof by reason of said loss.

Seventeenth. It denies that the libelant is entitled to recover any money under the terms of said policy and certificate of insurance.

Eighteenth. It admits the admiralty and maritime jurisdiction of this honorable court, but it denies that the premises stated in the libel are true.

Wherefore, it prays that the libel may be dismissed with costs.

United States of America, by Charles F. Lynch, United States Attorney for the District of New Jersey, by Joseph L. Bodine, Asst. U. S. Atty.

[File endorsement omitted.] .

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER OF SUBSTITUTION—Filed March 12, 1920

On the underwritten consent and on motion of Kirlin, Woolsey, Campbell, Hickox & Keating, it is hereby

Ordered that Kirlin, Woolsey, Campbell, Hickox & Keating be substituted for Kirlin, Woolsey & Hickox as proctors for the libellant herein.

J. Warren Davis, U. S. D. J.

[File endorsement omitted.]

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

Deposition Taken on Behalf of Libellant at the Office of Messrs. Kirlin, Woolsey & Hickox, 27 William Street, New York, December 1, 1919

Appearances: Messrs. Kirlin, Woolsey & Hickox (Mr. McGrann) for libellant; Hon. Joseph L. Bodine, United States Attorney for the District of New Jersey (by Robert Phillips, Esq., Assistant U. S. Attorney), for respondent.

It is stipulated and agreed that the testimony may be taken by a stenographer, signing, filing and certification to be waived, stenographer's fees to be taxable.

CHRISTIAN P. JENSEN, being duly sworn and examined as a witness for libellant, testifies as follows:

By Mr. McGrann:

Q. What is your occupation?

A. Mariner.

Q. What license do you hold?

A. I now hold a master's unlimited and pilot for New York bay and harbor and the Mississippi River.

Q. How long have you been going to sea?

A. Since 1906.

[fol. 34] Q. On the occasion of the stranding and loss of the steamship Llama on the 31st of October, 1915, were you serving on board that vessel?

A. I was serving aboard as third officer.

Q. How long had you been on her at the time of this stranding?

A. I had been on her about eighteen days.

Q. You joined her at New York?

A. I joined her at New York while she was undergoing repairs.

Q. Who was in command at that time?

A. Captain Clinch.

Q. Who was the chief officer?

A. Mr. Ricca.

Q. What was this Llama, what kind of a vessel was it?

A. She was an oil tanker. Had flown the German flag until the

outbreak of the war, when she was transferred to the American flag. She was owned by the Standard Oil Company of New Jersey.

Q. Was she a regular tank ship?

A. She was a regular tank carrier.

Q. On this particular voyage during September and October where was she bound?

A. She was bound for Copenhagen with oil in bulk.

Q. Did she have a full cargo?

A. She had a full cargo.

Q. What can you say of her condition generally?

A. She was in good seaworthy condition.

Q. Did she have a full crew?

A. She had a full crew.

Q. Do you recall when you left New York?

A. I don't recall the exact date.

Q. Will you refer to the log book which I will have marked for identification (handing witness book)?

A. We left New York on October 14 at 12:05 A. M. from an anchorage off Tompkinsville.

Q. Did anything unusual occur on the voyage across until you got to the vicinity of the Orkneys?

A. Nothing unusual occurred until we got in the vicinity of the Orkneys when we were boarded by a British naval officer and prize crew on October 29.

[fol. 35] Q. About what time on October 29 was it that this officer boarded?

A. It was about 7:30.

Q. In the morning?

A. In the morning; I was just coming on watch as the boat had pulled off.

Q. That is the boat on which the prize crew came on board?

A. Yes, sir.

Q. Was your vessel laid to for this purpose?

A. We stopped for this purpose in obedience to a signal from the British auxiliary cruiser.

Q. Did you see that cruiser?

A. I saw it; it was a converted merchant ship.

Q. Do you remember the name of her?

A. If I recall right it was the former Allen liner plying between New York and British ports.

Q. Did she fly the man-of-war flag of the British navy, do you know?

A. That I can't say.

Q. Do you know what occurred when this naval officer boarded the Llama as to what action he took, I mean personally?

A. He located himself in the cabin, stationed men on the bridge, that is, British enlisted men which formed part of the prize crew, and he habitually visited the bridge at his own discretion. From the time the prize crew boarded the ship until they all left one man was constantly on the bridge.

Q. Was that man armed?

A. No, sir; not to my knowledge, but he was always provided with an excellent pair of marine glasses.

Q. That is the man who was always on the bridge?

A. On the bridge, yes.

Q. That is, the crew relieved each other at that station, did they?

A. On the bridge, yes, sir. However, they had rifles as part of their equipment when they boarded the ship.

Q. Can you state where the vessel was at that time? If not, refer to the log and see if you can refresh your recollection?

A. She was in an approximate position of fifty-six degrees and [fol. 36] some minutes N. and longitude ten degrees and some minutes W. For the exact minutes I consider it advisable to consult the log.

Q. Refer to the log and see if they have it entered exactly?

A. (Looking at log.) It is here on 58.56 N. and 11.50 W. longitude.

Q. Had you ever been on the Llama on a previous eastward voyage?

A. No, sir; this was my first voyage on the Llama.

Q. Are you able to say whether or not she had ever gone through Westray Firth from any knowledge you have of the records of the vessel?

Mr. Phillips: Objected to for the reason that the witness has stated that this was his first voyage on the Llama.

A. To my knowledge she had not been through Westray Firth before, although she had been in Kirkwall on a previous voyage. This information I had from the chief and second officer who had made previous voyages to all the ports on this vessel.

Mr. Phillips: I move that the witness' answer be stricken from the record, as it is hearsay and not of his own knowledge.

Q. What occurred during the time from October 29 when you were boarded by the prize crew up to the morning of the stranding generally, what did you do, what did the vessel do?

A. We proceeded on a course that would take us in the vicinity of Orkney Islands evidently with the intention of going in there. On the night before stranding we arrived in the vicinity of Newhead, but in view of night coming on we hove to until the next morning.

Q. That would be the morning of the 31st?

A. That would be the morning of the 31st.

Q. What watch did you have on the morning of the 31st, if any? [fol. 37] A. I had the watch from 8 A. M. to 12 noon. I relieved the chief officer at 8 A. M. on the morning of the 31st of October.

Q. That is Mr. Ricca?

A. That's Mr. Ricca.

Q. Can you state where the vessel was at about 8 o'clock when you relieved him, what she was doing, what course she was on?

A. When I relieved him we were on a course of S. half W. with Newhead in sight on our port hand.

Q. Is that course you have stated the magnetic course or compass course?

A. That is the course by the Standard compass.

Q. Can you state what error, if any, there was on that course in deviation?

A. From observations that I had taken on our way across the error was almost negligible, I mean the deviation.

Q. Who was on the bridge at the time you went on watch?

A. The prize officer and the captain of the ship.

Q. Did you have a wheelsman at the wheel?

A. We had a man at the wheel and the usual lookout.

Q. That is the ship's lookout?

A. No; the usual lookout man *of* one of the members of the prize crew.

Q. He was on the bridge, was he?

A. He was on the bridge.

Q. Is that an open bridge?

A. It was an open bridge which is usually found in that class of vessels, that is extending from one side of the ship to the other and affording means of visibility all around the horizon.

Q. Where was the chart house located with respect to the bridge?

A. The chart house was situated on the same deck immediately abaft the bridge.

Q. Was the wheelsman inside of the chart house or outside?

A. The wheelsman was outside directly in front of the chart house.

Q. Where was your Standard compass?

A. The Standard compass was located on top of the chart house.

Q. Was there also a compass on the bridge?

A. Also a compass on the bridge directly in front of the wheelsman.

[fol. 38] Q. How was the weather on this morning?

A. The weather was clear, sky was overcast.

Q. Any wind?

A. There was a moderate breeze blowing, but I don't recall from what direction.

Q. How was the sea?

A. The sea was smooth. There was a moderate swell running.

Q. Did you continue on this course S. half W. which you stated was the course when you went on watch?

A. We continued on that course right along until after the prize officer and the captain returned from breakfast.

Q. What occurred then?

A. After they returned from breakfast and after they had, I presume, consulted the chart and other matters relating to this particular navigation, the course was changed to S. E.

Q. State the circumstances under which that course was altered to S. E., as far as you personally were concerned and saw it?

A. The captain and the prize officer were standing on the star-board side of the bridge, the exact conversation I do not know, but the captain acknowledged what I presume to be some order from the prize officer, because immediately thereafter he ordered me to steer S. E. by the Standard compass. I proceeded to the top of the chart room to execute this order.

Mr. Phillips: I object to the statement of the witness and move that it be stricken out, as the witness states a conclusion.

A. (continued). While the ship was being steadied on this course the prize officer pointed out to the man at the wheel a headland which he should steer for. When the ship came on a course of S. E. by Standard compass this course coincided with the information that the prize officer had given the wheelsman concerning the course the ship was to be steadied on.

Q. Did you ever hear the conversation that took place between the wheelsman and the prize officer, or the words of the prize officer [fol. 39] when he went to the wheelsman as you have described and indicated to him a headland?

A. I do not recall the exact words he said at that time, but I saw him pointing his finger ahead or nearly ahead and it was evident to me that the wheelsman was being given directions concerning the course from the prize officer.

Mr. Phillips: Objected to and I move that the last statement of the witness be stricken out, as he is stating conclusions.

Q. I show you the United States Hydrographic Chart No. 4464, published April, 1915, this being a chart of the Orkney Islands, and ask you if you can indicate in pencil on this chart the headland which was pointed out by the prize officer as you have testified?

A. The headland was here (indicating), on the chart it shows that it is called Fersness.

Q. Is there a highland in the vicinity of the headland?

A. Yes, sir; there is to the right of it proceeding on the course we were on.

Q. Indicate the headland by a circle all around it and the highland similarly.

Witness does as requested.

A. That is the headland, the circle below that is the highland (indicating).

Q. Just put your initials on the circles which you have designated.

Witness does as requested, marking the circles C. J.

Q. Did you continue on that course heading for the headland on which the wheelsman was directed to steer?

A. We continued this course for some time, but it was later changed to the right, it was about 8:53 when I received orders to

change the course to S. by E. three-quarters E. by Standard compass. I went on top and gave the usual orders to the helmsman, [fol. 40] stating the course on this S. by E. three-quarters E. course.

Q. Was the prize officer present at this time?

A. The prize officer was present on the bridge.

Q. How did you receive the word to change the course?

A. I always received my orders from the captain, because of the fact that he was the proper channel for me to receive orders from.

Q. And did he in fact tell you this course himself?

A. He told me this course himself.

Q. Did the prize officer know that this course was being made?

Mr. Phillips: Objected to for the reason that the witness can't be expected to know what went on in the prize officer's mind.

Q. Testify what the circumstances was as you saw it?

A. Previous to any change of course the prize officer always had a consultation with the captain and the captain seemed to acknowledge something from the prize officer immediately before I received orders to change the course.

Mr. Phillips: Objected to and I move that it be stricken out for the reason that the witness is stating what he has no knowledge of.

Q. I understand you are describing now what you saw on these occasions, are you?

A. I am describing what I saw on these occasions; yes, sir.

Q. Did this same consultation occur previous to this last change of course as to which you have testified?

A. Yes, sir; it did.

Q. Did you state about what time this occurrence took place on the change of course to the headland which you have marked on the Exhibit No. 1?

A. About 8:40 A. M.

Q. What time was it, if you recall, that this last change of course was made?

A. The last change of course to S. by E. three-quarters E. was at 8:53.

[fol. 41] Q. Did you continue on that course?

A. We continued on that course until we struck.

Q. Did you remain on the bridge constantly during that interval?

A. I remained on the bridge constantly during that interval because it was my watch.

Q. Was the prize officer on the bridge?

A. The prize officer was on the bridge constantly except during the time he went to his breakfast and at intervals when he went into the chart room.

Q. Was the prize officer on the bridge from 8:53 to the time you struck?

A. He did not leave the bridge by way of any of the two ladders situated on each side of the bridge. He might have been in the chart room, but this is also considered part of the bridge inasmuch

as all chart navigation was performed in this chart room and there was no way to leave the bridge through the chart room.

Q. What time did you strike?

A. 9:10 A. M.

Q. I notice it is entered in the log about 9:07, is it not?

A. Yes, sir; there is a discrepancy of three minutes, but I am positive of 9:10 because I looked at my watch and I kept a notebook with me all the time wherein I entered all times of importance and other matters which should be kept for further reference.

Q. Did you preserve this notebook to which you have just referred?

A. I preserved it until about six months ago, when thinking I had no further use for it I destroyed it.

Mr. McGrann: I will say on the record here this is the first knowledge I have of this notebook.

Q. You have got the ship on the course at 8:53 and stranded 9:10. Just describe as minutely as you can what occurred during that interval?

A. After I had steadied on the S. by E. three-quarters E. course, I went on the bridge again from the top of the chart house where the Standard compass was located. I kept a sharp lookout. Between the time of change of course and stranding I saw breakers on the [fol. 42]port bow close aboard. The fact of seeing these breakers naturally aroused my curiosity and also made me entertain a certain amount of doubt if we would clear them or not. I notified the prize officer in person about these breakers that seemed to me to be rather close on the course we were on. I asked him his opinion about being on a safe course to pass these breakers. He assured me we were. Because of the fact that my duty kept me on the bridge all the time I had no access to the chart, and presuming that the prize officer was naturally acquainted with the waters in this locality, I requested him to inform me of the name of this reef. He said he was not sure of the name.

Q. Just continue up to the time you stranded; did anything else occur?

A. I was standing a little to port of midship when I had my conversation with the prize officer. After finishing the conversation and getting no exact information as to the name of this reef, the prize officer went over on the starboard side of the bridge. I remained on the port half of the bridge. The captain who had been in the chart house came out on the bridge and stood near the prize officer. About five minutes after my conversation with the prize officer we struck. The bow rose several feet. We put the engines full speed astern, but remained fast and after I had ordered the lifeboats cleared away I proceeded to the other part of the ship to ascertain the extent of the damage.

Q. What did you find the condition to be?

A. The fore part of the ship was pierced and the water was rushing in very rapidly. I left the other part of the ship and went on the poop deck midship and took soundings.

Q. Do you recall these soundings, are they entered in the log book?

A. The soundings amidship were three fathoms. After taking the soundings and reporting them to the bridge the second officer and I supervised the clearing away of the lifeboats.

[fol. 43] Q. How long did you remain on the ship personally after the stranding?

A. After the stranding I remained to some time in the afternoon, about four o'clock, I think it was, when all left her because she was breaking up and it was considered unsafe to remain aboard any longer.

Q. Had any assistance come to the Llama up to that time?

A. Yes, sir; two British destroyers came about a half hour after we had stranded in response to our radio message.

Q. Did they render you any assistance?

A. They attempted to pull us off, but without success, of course.

Q. Did you return to the vessel later?

A. I returned to the vessel the following day.

Q. That would be November 1?

A. November 1; at that time several vessels were engaged in trying to pull her off. These vessels were British drifters.

Q. What condition generally was the Llama in at the time you returned, had she broken up any or was she in the same condition?

A. Her bulkheads were practically all broken. She had swung somewhat during the night and had a considerable port list.

Q. Did you see the Llama after this occasion of the first of November?

A. No, sir; after that day, I did not see her any more. I returned to the United States some time after that.

Q. Can you state where the stranding occurred, that is, could you locate on this libellant's Exhibit 1?

A. I can.

Q. Please do so.

A. The stranding occurred on what is called Skea Skerries.

Q. You have indicated a circle there; is that the position of the Llama at stranding?

A. The Llama at stranding.

Q. Suppose you put the figure 2 in that circle and your initials.

Witness does as requested.

[fol. 44] Q. Were there breakers directly where the vessel took the strand or were they clear of the vessel?

A. No, sir; the breakers were further in shore.

Q. How far away from where the vessel stranded?

A. About half a mile, I should say.

Q. Did you have occasion while the prize crew was on board the Llama to meet or communicate with any other vessels?

A. We communicated with another vessel about two to three hours after the prize crew had boarded us on October 29. This vessel was a British auxiliary cruiser. He requested certain infor-

mation from us; I hoisted our international signal numbers or our ensign and I also notified the British prize officer and the captain. At that time the British prize officer told me to hoist a certain flag of the international code. If I remember correctly it was the letter "X" he told me to hoist separately. When the other vessel saw the flag that I had hoisted in obedience to orders from the British prize officer this auxiliary cruiser steamed away from us again.

Q. Was there any other interchange of signals that you recall between other vessels and yourself?

A. No, sir; there was no other during my watches.

Q. On this occasion did you receive any orders from the captain of the Llama with respect to signals?

A. As I recall I did not receive any orders.

The deck log is marked libelant's Exhibit 2 for identification.

The rough log is marked libelant's Exhibit 3 for identification.

Q. Who prepared these logbooks that have been marked for identification?

A. The officer on the watch entered all items of interest in the rough log with a pencil. At the expiration of the day the chief officer copies in the smooth log with pen and ink.

[fol. 45] Q. Is that handwriting on Exhibit 2 for identification the chief officer's writing?

A. That is the chief officer's, Mr. Ricca's, writing.

Q. How about the writing for the watch on which the vessel stranded?

A. That is Mr. Fleming's, the second officer's writing; I did not have time to enter anything in the log immediately after the Llama had stranded because I was engaged on what I then considered much more important duties, but in order to be able to write up the log when I had time and access to it I entered everything of interest in a notebook which I always kept with me.

Q. Did the officer who actually made the entry in Exhibit 3 for that watch, 8 to 12 on the morning of October 31, take his entries from your notebook, if you know?

A. No; he did not make the entries directly from my notebook. I gave him such information as I could recollect from memory on our way from the ship to Kirkwall and I requested him to write up the log if he succeeded and I didn't have access to it.

Q. Just take a look over it and state if the entries are correct in so far as you now recall; I mean of that particular watch on which the stranding occurred?

Mr. Phillips: Objected to for the reason that the witness has testified the entries in the log were not made by him for that particular voyage and also I object to the use of that log by the witness to refresh his memory for the same reason.

A. The log is correct as far as it goes with the exception of time of stranding, which is given here as 9:07 when it was actually 9:10. Furthermore, the log is very incomplete for that particular watch,

but this is accounted for because of the fact that I did not make the entry myself.

Q. It has been put on the record here in the form of objection that such parts of your testimony as to which you have refreshed [fol. 46] your mind by reference to the log are objectionable. You have stated these occurrences from your own memory, have you not, except I believe one reference you made to the position you were in when the prize officer came on board?

A. Yes, sir; I have stated those from my own memory except the time of the date we left New York and the exact latitude and longitude in which the prize officer and crew boarded the Llama.

Q. I notice from the logbook, Exhibit 3 for identification, that you have course of 9 S. by E. three-quarters E. on the steering, but in the same column previous to that course you have the word "various" up to 5; does that interval cover the interval as to which you have been testifying about these changes of course of 8:40 and 8:53; in other words, is that covered by the word "varies" here?

A. Yes, sir; various, that is the usual way of entering courses when the changes are often or when in the vicinity of land.

Q. You are going to sea soon, I presume, when an opportunity offers, are you?

A. Well, I don't think I will go to sea until next summer; the ship is under course of reconversion to a passenger ship; the name of the ship is Agamemnon, ex-Kaiser Wilhelm II; she has recently been recommissioned as a transport.

Q. You are continuing your occupation of mariner?

A. I am continuing my occupation as mariner; I am attached to this Agamemnon as chief officer.

Mr. McGrann: I am willing to put the logbooks in evidence if you wish them.

Mr. Phillips: No.

Mr. McGrann: At any rate, I will preserve them for the Court to look at, to use as it pleases.

Counsel for respondent examined the logbook, libellant's Exhibit No. 3 for identification.

[fol. 47] Cross-examination by Mr. Phillips:

Q. Where was the Llama bound on this voyage?

A. She was bound for Copenhagen, Denmark.

Q. Were you to stop at any other port on the way to Copenhagen?

A. To the best of my knowledge we were not to stop at any other port except, of course, after the prize officer boarded us when we were bound to Kirkwall.

Q. At the time the British cruiser overhauled you for what place were you steering?

A. We were steering for a place what is known as the Hole, situated between Orkney Island and Fair Island.

Q. Is that south of Kirkwall?

A. The Hole is to the northward of the Orkney Islands.

Q. Fair Island is to the north?

A. To the north and eastward of Orkney Island.

Q. Had you at any time previous to this voyage visited Kirkwall?

A. No, sir; I had never visited Kirkwall before.

Q. Do you know if it was intended that the Llama should call at Kirkwall for British admiralty instructions on this voyage before she was overhauled by the British cruiser?

A. I don't know that it was intended, but from common knowledge it was known that all vessels bound for the North Sea were being ordered into Kirkwall by the British naval authorities for visit and search.

Q. Do you know of your own knowledge whether or not the Llama was going to Kirkwall first when she left the United States and then to Copenhagen?

A. I do not know that she was going there, but, of course, we were aware that we undoubtedly would be stopped and ordered in there. We had no other reason as far as I know to go to Kirkwall.

Q. Isn't it a fact that the Llama was on a voyage to Copenhagen with orders to call at Kirkwall by arrangement between her owners and the British navy?

A. I do not know of any arrangement that the Llama's owners had made with the British naval authorities.

[fol. 48] Q. So far as you are able to tell me, then, the Llama was bound directly to Copenhagen on this voyage?

A. Yes, sir.

Q. With no intention of making any stop? Anywhere of her own accord, is that right?

A. No intention unless we were ordered to do so by the British authorities.

Q. In your earlier testimony you have referred to these British naval people who came aboard the ship as a prize crew; did they declare her a prize when they came on board?

A. Officially they did not declare her a prize.

Q. Did you see them when they came on board?

A. I did not see them when they came aboard because I was getting my breakfast at the time, but I saw and heard them a few moments after they had boarded us. They were standing talking directly outside of my room.

Q. Who was talking?

A. Members of the British prize crew.

Q. To each other?

A. To each other.

Q. At what time did you come on watch that morning?

A. At 8 o'clock A. M.

Q. Do you always have the forenoon watch on that ship?

A. I always had the 8 A. M. to 12 noon watch and the 8 P. M. to 12 o'clock midnight watch.

Q. You had this same watch every day, the forenoon watch and the first watch?

A. I had those same watches every day, it is the general orders of duty for third officers throughout the merchant marine.

Q. Did you see this British cruiser heave the Llama to?

A. No; I did not see her heave her to.

Q. You have stated that the British officer took charge, how do you know that he took charge; did he give you any orders?

A. No, sir; he did not give me any orders, but the very fact that he was a naval officer boarding a ship having a civilian crew at a time that the government that this officer was under orders from was engaged in war with the Central Powers would seem reasonable to suppose that he was in charge.

[fol. 49] Q. Did he assume direct charge of the navigation of the Llama—you were there, weren't you?

A. I was there and the impression I was under was that he was in charge of the entire ship, this would also include the navigation.

Mr. Phillips: I move to strike out the witness' answer as it is not responsive.

Q. I repeat my question, did the British officer assume direct charge of the navigation of the Llama?

A. Well, I wouldn't have hesitated for one moment to take orders from him, neither would any of the other officers. He did not officially inform us that he was in charge of the vessel.

Q. Did you see the British officer actually direct the navigation of the Llama?

A. I did not see him actually direct navigation.

Q. That is what I want to know. What did the British sailor who stayed on the bridge do while he was on the bridge?

A. He was there as a representative of the British naval officer, what his orders were I, of course, do not know.

Q. You have stated in your previous testimony here this morning that the Llama did not go through Westray Firth before to your knowledge; I think I am correct in that; how do you know she did not go through Westray Firth before of your own knowledge that is?

A. On the two previous voyages she had been in Baltic ports and I had information from the second and chief officer who had been attached to the Llama during these two previous voyages that they entered Kirkwall from the eastward, that is, from the North Sea side. Knowing that it was a difficult way to enter Kirkwall through Westray Firth I decided to obtain all the information possible concerning the navigation through Westray Firth and I consulted the chart with the second officer, Mr. Fleming.

Q. You are not able to say of your own knowledge, something that you actually witnessed, whether or not that ship ever before went [fol. 50] through Westray Firth, are you, this was your first trip on her?

A. This was my first trip, of course, but—

Q. She could have gone in there a dozen times without your having known it, couldn't she?

A. She could have gone in there a dozen times without my knowing, of course, but the second officer and the chief officer had been attached to the vessel on previous voyages and there was no reason

whatsoever why they should have informed me that she had gone any other way than what they told me.

Q. In answer to my question as to your own knowledge, you haven't any knowledge of your own as to just which way she did go into Kirkwall before, have you?

A. I have no other knowledge than the information I got from the second and chief officer.

Q. Than what somebody told you?

A. What somebody told me.

Q. Do you know whether any other officer of the ship had ever been through Westray Firth?

A. That I do not know for certain.

Q. Do you know if the captain had been through there before?

A. I do not know.

Q. Did he ever say anything to you about it?

A. No, he did not.

Q. On the night before the stranding did you have the deck from 8 to 12?

A. Yes, sir, I did.

Q. What was the vessel doing at that time?

A. We were maneuvering under reduced speed during my watch, we were headed directly away to the northward off Orkney Islands. At about 2 A. M. the course was changed directly opposite to the one we had been standing out on.

Q. Just confine yourself to what happened in the watch you had on deck, when you took the deck at 8 o'clock what was she doing then?

A. We were reducing all speed when I came on deck and I did not relieve until the ship's speed was reduced and we were on a course away from the land.

[fol. 51] Q. What was the purpose of doing that, can you tell us?

A. The purpose was to remain in the vicinity of the entrance to Westray Firth, but not wishing to enter before daylight when navigation could be easier performed than during the hours of darkness.

Q. Who didn't wish to enter the strait until daylight?

A. That I do not know.

Q. Who told you about it?

A. No one told me about it but it was evident from the maneuvering we were performing that we were to remain in the vicinity of Westray Firth until the morning, until daylight.

Q. When you relieved the deck at 8 o'clock, didn't you as is usually the case obtain from the officer you relieved certain information as to what the vessel was doing, such information as you the officer in charge for that watch should have at hand?

A. Do you mean at 8 o'clock?

Q. Yes, when you took the deck?

A. I didn't receive any information as to the reason why we were standing away from the land. That of course seemed self-evident, it is not customary to explain the reason for each and every order received.

Q. Tell us just what information was turned over to you by the officer you relieved when you took the deck at 8 o'clock P. M.?

A. The information that was turned over was the course and the speed and that land was in sight.

Q. Is that all?

A. That is all in connection with the performance of my duties.

Q. Did you get any other information at the same time?

A. If I recall right I got information that we were standing away and would enter Westray Firth in the morning; this information, however, was purely unofficial.

Q. Who gave you that information?

A. The chief officer, Mr. Ricca.

Q. He being the officer you relieved at 8 o'clock the night before the stranding?

A. He being the officer I relieved.

[fol. 52] Q. Was the captain on the bridge during that watch?

A. He was on the bridge at the beginning of the watch or, to be correct, when I came on the bridge, but he retired shortly after.

Q. Did you have any orders as to a change of course that was to be made after awhile?

A. I didn't have any orders for any change of course, but the night order book was entered for the sailing officer to change the course at a certain time, I think it was 2 A. M.

Q. What is the night order book?

A. The night order book is a book wherein the master of the vessel enters orders for the officer of the deck. This night order book was always in use aboard this vessel and it is customary throughout the merchant service.

Q. I am to understand then that this night order book is a book in which the captain writes his orders to the officer of the deck?

A. Yes, sir.

Q. So that the orders in that book would be the orders of the captain and signed by him?

A. Orders of the captain and signed by him.

Q. Did you have any conversation with the captain that night as to why he was standing off the beach?

A. No, sir, I did not.

Q. Did he refer to it at all?

A. I think he informed me where land was and called my attention to the fact that it could be dimly seen with glasses.

Q. In your testimony this morning you said at one time the captain seemed to acknowledge something from the British officer and then gave an order to you to execute?

A. Yes, sir.

Q. Did you hear the words that were said?

A. I did not hear the exact words because they were on the star-board side of the bridge and I was on the port side.

Q. Was that the weather side or the lee side, which side were you on?

A. I was on the port side.

[fol. 53] Q. Is that the weather side?

A. That I do not recall, but the wind was only moderate anyway. The reason I did not hear was the distance between us and the fact that the conversation was only in an ordinary voice.

Q. You are not able to say then what passed between them?

A. I am not able to say the exact words that passed between them.

Q. What are you able to say that passed between them?

A. I am able to say a conversation passed between them.

Q. You don't know what was said?

A. I don't know what was said; no, sir.

Q. On direct examination this morning you have said that the British officer gave some information to the man at your wheel?

A. Yes, sir.

Q. Did he give him an order?

A. He didn't give an order, but he emphasized the order that I had already issued.

Q. How did he emphasize the order you had already issued, did you hear what he said?

A. I heard him instructing the man on what course to steady the ship by pointing to a headland nearly ahead.

Q. What did he say?

A. I cannot say the exact words now.

Q. As nearly as you can remember, what did he say?

A. As I remember he said, "You see that land ahead there?" whereupon he pointed; the man at the wheel answered in the affirmative.

Q. Is that all?

A. He said, "Well, that is it, when you get on that, steady on that."

Q. Did he actually tell him to steady on that?

A. I am not sure that he actually said steady on that headland, but he indicated to the man at the wheel that the land ahead was where he wanted to steer for.

Q. How did that highland bear when you first saw it?

A. When I first saw it it bore on the port bow, I did not take any bearings.

[fol. 54] Q. How many points on your bow?

A. About 4 points I would say.

Q. That would be broad on your port bow, wouldn't it?

A. Yes, sir.

Q. You have said that at 8:53 A. M. on the day of stranding you changed course to S. by E. three-quarters E?

A. Yes.

Q. On whose order did you change that course?

A. I changed it on the captain's orders, as I said, I always received my orders from him.

Q. I have also understood you to say that you kept that course until she struck?

A. What course?

Q. The corner you took S. by E. three-quarters E.?

A. Yes, sir.

Q. So at the time she struck you were steering that course?

A. Yes, sir.

Q. You say this chart house is used for navigation?

A. Yes, sir.

Q. That is not such a place as an officer of the deck could stand on watch in?

A. No, sir.

Q. It would be prohibited from standing a watch in there?

A. Yes, sir; absolutely prohibited and no officer would do it because he could not perform his most important duties in there.

Q. Was this notebook you spoke of that you preserved for quite awhile and then lost or you don't know where it is now, was that notebook the only book of memorandums or the only memorandums you made of your watch on the morning of the stranding?

A. No, sir; I also made a copy of my notes on a separate sheet of paper.

Q. Where is that?

A. That, I think, I have also destroyed; I saw it about six months ago in my home.

Q. Do you know where it is now?

A. I think I have destroyed it; I may have it, but am not sure.

Mr. McGrann: I ask you to make a search for it and if you find it send it over here and I will produce it.

[fol. 55] Q. Did you have a chart table on the bridge while officer on the deck while on the watch?

A. No, sir.

Q. Did you ever use a chart table on the bridge while pilot coming in to land?

A. Not while I was on board, it would be practically impossible to use a chart efficiently on the bridge.

Q. You say you notified the British officer about the breakers?

A. I did.

Q. Was the captain on the bridge?

A. The captain was inside at the chart house at that particular time.

Q. Did you notify him?

A. No, sir.

Q. You did not notify the captain at all, were not the captain and the British officer in the chart house together a short time before the ship struck?

A. They were.

Q. Was that before or after you reported the breakers?

A. I cannot say for sure now; I think it was after, but on that point I am not certain at all.

Q. After the ship struck did you locate her position by cross bearings?

A. I did not, the chief officer did.

Q. How much water was she drawing forward?

A. I think it was two fathoms.

Q. She was drawing twelve feet forward?

A. Yes, sir.

Q. You have said before that you exchanged signals with another British war vessel?

A. Yes, sir.

Q. Did you have the deck at that time?

A. I had the deck at that time; it was on the same date that the prize officer and crew came aboard.

Q. You made your number to them did you, made your signal?

A. Yes, sir.

Q. You have said that the British officer told you to bend on and hoist the code flag X was it or some letter?

A. I am not sure if it was X, it was one of the international flags.

Q. Do you recall his language in that connection, how he came to acquaint you with his wishes in the matter, the exact language he used?

A. I left the bridge, I went down in the cabin and said there [fol. 56] is a British war vessel; I hoisted up our international code numbers; is there any other instructions; I received orders to hoist up this particular flag of the code and proceeded to the bridge again, where I executed this order.

Q. That was what the captain told you to do?

A. That was what the British prize officer told me to do.

Q. What did the captain tell you to do?

A. The captain did not tell me anything.

Q. When you reported this British vessel, this British warship, to him what instructions or answers did he make if any?

A. He answered, as I said, that I should hoist this particular flag.

Q. The captain said that?

A. The British prize officer.

Q. Where was he?

A. In the cabin.

Q. With the captain?

A. With the captain; yes, sir.

Q. What was his language, do you recall the exact language he used?

A. I do not recall the exact words.

Q. As nearly as you can recall, what did he say to you?

A. He said, as nearly as I recall, he said either hoist or run up such and such a flag.

Q. When you went into the cabin at that time to whom did you address your remarks?

A. I didn't go into the cabin, I stood on the deck above and hollered down, the door was open.

Q. To whom did you address your remark?

A. I addressed my remark to the persons that were in the cabin.

Q. Generally; did the prize officer actually order or did he request you to hoist this flag?

A. Well, I took it as an order because of the fact—

Q. What was it he said to you?

A. He said for me to hoist this particular flag.

Q. Can't you remember just how he said that to you, I want to know that?

A. I cannot remember just the exact words he used.

Q. Did he say please hoist the flag or hoist the flag or what?

A. He didn't use any words such as please; he simply said hoist such and such a flag.

[fol. 57] Q. Did the captain have anything to say at that time?

A. Not that I heard.

Q. Did you get any orders from the captain at that time to obey the British prize officer?

A. No, sir; I did not stop any longer; I proceeded to the bridge immediately because I was very anxious to give the British war vessel the information he desired in order that he should not interfere with our voyage.

Q. Did you actually leave the bridge to get that information?

A. I actually left the bridge to get that information.

Q. While you were officer of the deck?

A. While I was officer of the deck.

Q. You have stated that Mr. Fleming wrote up the log for your forenoon watch on the day of the stranding?

A. Yes, sir.

Q. Do you know when and where he wrote that up?

A. I don't know; I think he wrote it up several days after the stranding.

Q. Was he on the bridge at any time during your watch on that morning?

A. No, sir.

Q. You have said that the log was incomplete, do you mean that there were other matters that would ordinarily have been entered in the log but were left out?

A. Ordinarily they perhaps would not have been entered, but in view of the desirability of having this information now the log is incomplete.

Q. By that do you mean that there were other matters bearing on the stranding that would have furnished more information?

A. Yes, sir.

Q. You have also stated that the log was incorrect?

A. In one respect; yes, sir.

Q. These matters that were left out of the log, if you had written up the log would you have put them in?

A. If I had written up the log after the stranding I certainly would have put them in.

[fol. 58] Q. Do you know of anything that happened on the morning of the stranding before you took the deck at 8 o'clock?

A. I know that some time before I came on watch we began to proceed for Westray Firth.

Q. You don't know any of the details of handling the ship before you took the deck?

A. I don't know of any other details except we went under full speed again.

Q. Were you heaving the lead that morning before you struck?

A. No, sir.

Q. Were you heaving the lead at any time on this voyage before you struck?

A. No, sir.

Redirect examination by Mr. McGrann:

Q. On cross examination you have designated some place for which you had been proceeding before the time that the naval officer and the prize crew came on board, can you indicate it on this chart which I show you; I think you said it was to the north of the Orkney Islands?

A. Through here (indicating on chart).

Q. Just draw a line.

Witness does as requested.

Q. Put your initials under that line, please.

Witness does as requested, indicating an arrow underneath which he puts his initials C. J. on chart No. 4840.

Mr. McGrann: I offer the chart 4840 in evidence.

It is marked libellant's Exhibit 4.

Q. I don't think I asked you before, but I will ask you now, what license did you hold on that occasion?

A. On that occasion I held a second mate's of any ocean and any tonnage issued by the United States local inspectors of New York.

Q. In reply to the question that was asked you about the British [fol. 59] naval officer actually directing the navigation do you consider the incident of the direction to the wheelsman a direction of the navigation?

Mr. Phillips: Objected to.

A. No, I consider the very fact of his presence aboard as evidence that he is directing and in command of the ship.

Q. When you say direct the navigation, do I understand that you did not see him actually work out any navigation or what do you mean by the term "direct," how do you interpret the term "direct the navigation"?

A. Direct the navigation; well, the way I interpret it is the officer who is in charge of the ship directs the navigation, practically everything done on board the ship is in connection with the navigation of the ship.

Q. I am referring now to your answer to the question which was put to you, what did you understand was meant by that question directing the navigation?

A. By that I presume that Mr. Phillips meant the actual science of navigation.

Q. You mean coming out on the bridge and setting the course, directing the wheelsman by voice, is that the way you interpret it?

A. Yes, sir; that is the way I interpret it.

Q. Please refer to libelant's Exhibit 1, bearing in mind your previous testimony that you were on a course about S. E. at one time and state whether or not the course S. by E. three-quarters E. would set you closer or further away from the position on which you subsequently stranded?

A. The course S. by E. three-quarters E. would take us away.

Q. That is, it tended to carry your course farther to the westward, would it?

A. To the southward and westward.

Q. In other words, if you had followed the course approximately S. E. for the headland which you say was pointed out by the naval [fol. 60] officer would that have carried you into clear water?

A. No, sir; that would have carried us into foul water sooner.

Q. You have told Mr. Phillips that you did not notify the captain when he was in the chart house about this breaker incident, that is, your having pointed out breakers on your port hand to the British naval officer, have you any reason for not having reported to him this incident, if so, state what it was?

A. Well, the first reason was that the captain was in the chart house; I was on the bridge keeping particular lookout for mines, floating mines; furthermore, I notified the British prize officer and of course considered that sufficient authority to notify; furthermore, he gave me the assurance that everything was safe and I naturally let the matter drop.

Q. Did he himself see these breakers that you pointed out?

A. He saw them himself and looked at them through his glasses.

Q. You didn't have any other pilot on board this vessel, did you, beside the British naval officer, if I can term him a pilot?

A. We did not have any pilot aboard.

Q. When you sang down as you have stated about the cruiser incident and your having hoisted a signal letter where did you go to give that information, just what point did you go to?

A. I went on the port side after part of the lower bridge, this lower bridge deck covers the officers' quarters and the cabin; standing on this lower bridge deck I bent over and sang out.

Q. Was that any considerable distance from the bridge on which you were keeping your watch?

A. The bridge was situated above this lower bridge.

Q. And you had simply to descend from the upper bridge down to the lower bridge, is that the idea?

A. Down to the lower bridge and about 7 or 8 feet farther aft from the ladder.

Q. In reference to the entries in the logbook which you say you didn't have time to write up are there any matters now that you can recall that you would or might have entered in the logbook which [fol. 61] we have not now covered on your deposition?

A. No, everything that occurred before the stranding I have stated in my testimony. What else I had entered in my notebook

is mostly the names of the vessels that came to assist us and the times that the hawser parted.

Q. Those were matters subsequent, after the stranding?

A. After the stranding; yes, sir.

Q. In marking this position on the chart Exhibit 1 you have located the position approximately, I take it, since you didn't take bearings yourself, is that correct, this position of the stranding?

A. Yes, sir; that is approximately.

Q. I notice on this chart the soundings of water immediately around the shoal itself as shown on the chart are rather deep?

A. That coincides with the way we were stranded because we were afloat aft.

Q. Was it deep water aft?

A. It was deep water aft, we were afloat aft.

Q. Then would the lead have shown you anything immediately before stranding if you had used the lead?

A. I don't hardly think the lead would have been sufficient.

Q. That is, I refer to a hand lead?

A. Yes, sir; the lead would not have been sufficient to navigate by in those waters.

Recross-examination by Mr. Phillips:

Q. Why would not the hand lead be sufficient, by that I take it you mean 20 fathom hand lead, don't you, isn't that what you usually have?

A. A hand lead?

Q. You had a hand lead on board the Llama, didn't you?

A. Yes, we had a hand lead and the usual——

Q. Did you have a Lord Kelvin machine?

A. Yes, sir; but lead would not have been sufficient to navigate by in those waters because of the fact that the reefs located in there are very steep.

[fol. 62] Q. Did you at any time use any kind of sounding machine?

A. I did not use a sounding machine at any time.

Q. Did any one on board the vessel to your knowledge use any kind of sounding machine to get a sounding, or lead?

A. Not from the time we passed Newhead until the time we struck.

New York, June 19, 1920.

Further depositions held at the office of Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating, 27 William street, New York City.
Present as before.

THOMAS EDWARD CLINCH, being duly sworn and examined as a witness for the libellant, testifies as follows:

By Mr. McGrann:

Q. What is your occupation?

A. Mariner.

Q. How long have you been following the sea?

A. Since 1885.

Q. What has been your experience, captain, just what class of vessels and in what capacities?

A. Apprentice, seaman, mate and master.

Q. How long were you master of vessels?

A. Since 1912.

Q. Were you ever employed by the Standard Oil Company of New Jersey?

A. Yes.

Q. In what capacities?

A. As mate and master.

Q. What vessels were you master of?

A. Master of the Llama and master of the Hilton.

Q. Are you duly licensed, have you held any licenses, if so, what?

A. Held a British master's license from March, 1900, and American master's unlimited since 1902.

[fol. 63] Q. Do you recall when you took command of the Llama about?

A. Yes, sir; in May, 1915.

Q. Were you on the Llama and were you in command of the Llama at the time she stranded, October 31, 1915?

A. Yes, sir.

Q. Had you been on her continuously from the time you were first master?

A. Yes, sir; three trips to Europe.

Q. Can you give us a brief description of the Llama?

A. The Llama was originally—she flew the German flag, she was a vessel over 300 feet long, about 315 or so, about 44 feet beam, loaded she drew about 25.6 forward, that was her lowest draft.

Q. What was her general construction, her type?

A. Oil tank, just built for an oil tank.

Q. With compartments?

A. Seven compartments, seven tanks, engines aft.

Q. Single screw?

A. Single screw.

Q. What was her fuel?

A. Coal.

Q. Coal burning?

A. Coal burning.

Q. Now on this voyage on which she stranded, when about did you leave New York?

A. About October 14th to the best of my knowledge—the 14th.

Q. Where were you bound?

A. Bound to Copenhagen via Kirkwall—I am not positive of that, I don't know whether Copenhagen or not, anyhow we had to call—had to go via Kirkwall.

Q. What cargo did you have?

A. About 4,400 tons of gas oil, 300 barrels of colza oil and a few barrels of glue, I think 30 barrels.

Q. What was the condition of the Llama?

A. Seaworthy in every way.

Q. How about her crew, what sort of a crew?

A. Neutral, Scandinavians, mostly on deck, a mixed crew in the engine-room, probably some Spaniards, but all licensed officers, all [fol. 64] the officers and engineers practically American citizens, the petty officers, too.

Q. Did you have a full complement?

A. Full complement.

Q. Now, just describe briefly the course of your voyage, whether anything transpired up to the time of reaching the vicinity of the Shetlands?

A. Nothing—just the ordinary voyage until we got off the coast of Scotland—that was all until the morning of the 28th—we had bad weather for two or three days, say from the 26th, 27th and 28th, but that was ordinary.

Q. Was that October?

A. October.

Q. What occurred, if anything?

A. On the morning of the 29th we were held up by a British auxiliary cruiser.

Q. Do you know the name of this cruiser?

A. No.

Q. What were the circumstances, just describe everything that occurred.

A. We were laying to for bad weather, waiting to proceed, in the vicinity of the coast, the cruiser comes along, this was about—I had been going since 1914, since the beginning of the war and it was an ordinary circumstance, you expected to be held up by these ships—she came along and sent her crew aboard, this cruiser told us what ship is that, the ordinary signals and sent a boat aboard with an armed guard, an English lieutenant and I think about six men.

Q. Did you meet them?

A. No, we stopped and they got to the windward of us and sent a boat to the leeward.

Q. Did you meet them personally when they came aboard?

A. Yes, met them at the gangway as usual.

Q. Just describe what occurred between you and the officer in charge of this armed guard?

A. Well, he said good morning, the officer in charge, the men disbursed as usual, they had their orders, good morning he says, we have orders to take you to Kirkwall, well, I said, we were bound there anyhow, he said, that is all right, so with that we went up there—[fol. 65] went up in the chart room, he signalled over to his vessel,

and we were ordered to proceed, his orders were full speed ahead, captain.

Q. That is he gave you those orders?

A. He gave me those orders, yes, orders, to proceed full speed ahead, we put the vessel full speed, put her on her original course to the north of Scotland, to the north of the Firth and we got in the chart room and I says which way are you going——

Q. You said to him how are you going?

A. I said to him which way are you going, he went into the chart room, the chart was laid out, I got out the chart that he wanted, I says we will go through the Fair Island Passage or through the Westray Firth, he says we will go through the Westray.

Q. Had you laid down your course or made any plans as to what course you would pursue if you had not been instructed otherwise?

A. If I had not been held up I would have went through the Fair Island Passage to the north of the Orkneys and around the coast right down the Fair Island Passage.

Q. Why would you have taken that passage?

A. It was more safe.

Q. In what respect?

A. More sea room, I mean just as safe there as in the Atlantic.

Q. Captain, I show you Chart No. 4840, entitled the North Sea, which has already been marked libellant's Exhibit 4 of December 1, and ask you to indicate on that chart by this pencil what course you would have pursued in so far as is shown on that chart?

A. Here is Skea Skerries, here is the Westray, well, we would naturally have come this way in deep water right through or where there is an open passage of probably two miles, this is the passage we generally maneuvered during the war, all up through here, what is called the Hole proper, that is between the Shetlands and the Orkneys, coming from Skea Skerries, come the same way because you got more sea room between here and there.

[fol. 66] Q. That is between the Shetlands and Fair Islands than between Fair Islands and the Orkneys?

A. Yes.

Q. You also indicated a course westward from Skea Skerries?

A. Yes, you took the same.

Q. That is between Fair Islands and the Shetlands?

A. Yes, between the Orkneys and here to the north of Fair Island, that is the safe passage.

Q. You have indicated by a red pencil mark, is that the course you intended to take?

A. Yes, right up here and down here to Auskerry.

Q. Here is another chart on a larger scale, this is numbered 4464 and is called the Orkney Islands and has already been marked libellant's Exhibit 1 of December 1, suppose you also indicate on that chart the course which you purpose taking, does that show?

A. This doesn't show the Fair Island Passage, it is up here.

Q. To the north of that, is it?

A. Yes, 59.31 Fair Island Passage——

Witness looks at the chart and says it is to the north of that.

Q. Suppose you mark a continuation from Fair Island Passage down to where you were going?

A. We would have come right—this is the Westray Firth, here is Noup Head and here we would have come right down between the Orkneys and the Shetlands and come down here to Auskerry, this is the light here, this is Auskerry Sound.

Q. Run your course down roughly.

A. Right through the north, right over here, this is the Westray, here we would have had Noup Head to the south here, this is the passage through the stream down into Kirkwall.

Q. Just indicate by letters the course you have marked, A B C.

A. To the south, this is Auskerry right there.

Witness marks the course A B C.

Q. Could you have gone to the southward between Fair Island and the Orkneys?

A. Yes, there is room there if the weather was fine and clear.

[fol. 67] Q. What became of the armed guard, you said they disbursed, what did you mean by that?

A. They disbursed, they took the watches I believe, that is one man went to the wireless room and one man on the bridge, standing watches I suppose.

Q. Did you see them there?

A. Yes, almost beside me.

Q. Did the officer say anything to you about what the men were to do?

A. No.

Q. What his own men were to do?

A. No, sir.

Q. Did he communicate with you in any way as to what the object of the men on board was?

A. No, sir.

Q. You have designated these men as the armed guard, why do you call them the armed guard?

A. Well, they come aboard armed, they came aboard armed and I believe they came aboard to take charge of the vessel in all conditions to see she was taken according to the British Admiralty orders, wherever they wanted to take her.

Mr. Philips: I move to strike out his answer as stating a conclusion.

Q. What arms did you see?

A. Rifles and revolvers.

Q. Did they carry these arms all the time on board?

A. The man on the bridge he was armed with a revolver, the officer was armed with a rifle, the officer and the man on bridge—the men on duty were armed and the others were supposed to have them on at all times.

Q. Do you know approximately the position of the Llama when she was boarded as you have described?

A. About 400 miles westward of Kirkwall, the latitude and longitude I don't remember, it is in the logbook probably.

Q. I ask you to refer to the logbook which has been marked libellant's Exhibit 3 for identification and refresh your recollection by referring thereto, of the noon position of October 29, 1915, just state it on the record?

A. Noon position 58 degrees 56 minutes N. latitude, 11 degrees 33 minutes W. longitude, that was the noon of the day we were boarded.

[fol. 68] Q. At what time were you boarded?

A. 7:30, here it is, 6:59 stopped by British cruiser, they were all ready.

Q. Does that accord with your recollection?

A. Yes, it was daylight and it was late in October, that was about daylight when they came aboard, probably had us in view for three or four hours previously.

Q. That was on the morning of October 29, you have testified that certain conversation took place, describe what you did in pursuance of that conversation, if anything, after you were instructed that you would go through the Westray Firth?

A. We proceeded toward—put the vessel on a course to the north toward the Westray, Noup Head, which we reached about 8 P. M., we sighted land on October 30, it was cloudy weather, we did not think it safe or he did not to proceed through the Westray Firth at night under the weather conditions, if it had cleared up he intended to make the passage during the night, claiming that he was well—that he knew the Westray Firth, knew the passage well, the weather continued cloudy and slightly hazy during the night, at daybreak when we could see the land, about 7:45 A. M. he said, I think it is clear now to make the passage, so we put the vessel on the course S. one-half W. heading towards the passage.

Q. Was there a light on Noup Head?

A. No, sir; the light was extinguished; there was a lighthouse there.

Q. How was this course S. one-half W. arrived at, captain?

A. That was supposed to take us, the prize officer in charge of the armed guard thought that was a safe passage and would take us—as far as I could see, he had charge of the navigation through the Firth.

Q. Did he say to you, take this course S. one-half W. or did you say to him?

A. He says we will head S. one-half W.

Q. Where was he when he said that?

A. Went in the chart room; we had been there two or three hours in the morning, from 5 o'clock to 8 o'clock, and he laid out the [fol. 69] course S. one-half W., intending to pass about a mile and a half or two miles from the head, the lighthouse.

Q. Who gave the order to the officer in charge of the watch or the wheelsman, who transmitted that order?

A. He gave it to me and I transmitted it.

Q. Can you recall approximately how long he remained on that course, what change you made and the circumstances, if so, please do so?

A. It was about 7:45 when he headed in on the course S. one-half W., about 8:10 we had the lighthouse abeam and we continued on that course until about 8:40, when he sighted—he seen land on the port side which he thought was Fersness, he says there is Fersness, we will head for that; I said all right; he went to the wheelman and said, there is that point of land steer for that; all right, we headed for that land about 8:40; we headed on that until about 8:50, then seen the two pieces of land, two small islands open up on the port side and he said there is the Holms, then altered the course, says we will head for that; then he said S. by E., we made for these two pieces of land, she was heading S. by E. three-quarters E.

Q. Now, to go back, you said that the officer made out some land which he designated as Fersness, did he express this to you?

A. He expressed it loudly to everybody so they could hear.

Q. Where were you two standing at that time?

A. On the bridge in the vicinity of the pilot house.

Q. Did you have a chart, were you doing any consulting of a chart?

A. Looked at the chart occasionally; there was no chart on the bridge, it was in the pilot house.

Q. How was the pilot house located with respect to the bridge?

A. Probably about nine feet—nine or ten feet from the helmsman.

Q. Was it an enclosed chart house?

A. An enclosed chart house.

Q. Was it on the same level as the bridge?

A. On the same level.

[fol. 70] Q. And when the British officer indicated this point of land or highland or whatever it was and said we will head for that, did you consult the chart to see what the course would be?

A. No; I left it all to him.

Q. Did you later find out what the course was when you got on this—

A. Afterwards, after the vessel was ashore and everything.

Q. No; I mean at the time, captain, what course was it you took?

A. S. E.

Q. Then you said that was about 8:40?

A. About 8:40.

Q. And you pursued that same course until the change that you say was subsequently made at about what time?

A. 8:50.

Q. Are these times times which you can express exactly, or is this your own judgment?

A. It is taking the course and then glancing at the pilot house clock and making sure it could not be more than one minute out.

Q. Then after taking this southerly course which you have said was what, after the S. E. course?

A. S. by E. three-quarters E.

Q. Were these courses true or magnetic courses or what?

A. Magnetic compass courses.

Q. Then where were you when you took the southerly course?

A. We had just sighted—

Q. I mean you personally?

A. On the outside of the bridge, outside the chart room on the bridge.

Q. Did you remain in that same spot?

A. Stopped there all the time until after she was on the course and we seen these two islands ahead and went in the chart room to put down this new course, where it would fetch us, while I was in there she struck.

Q. Was any report made to you from the time that you set this southerly course, that is S. E. by E. three-quarters E. up to the time the vessel struck?

A. No report at all, sir.

[fol. 71] Q. Where was the prize officer?

A. He was on the bridge, close to the helmsman, between the pilot house and the helmsman.

Q. Who was the officer on watch?

A. He was away over on the port side—Jensen, the third officer.

Q. Did he have the watch from 8 o'clock on?

A. From 8 to 12 is his watch.

Q. Whom had he relieved?

A. The chief officer, Mr. Ricca.

Q. What did you do when the vessel struck?

A. Quick as I could possibly reach the telegraph put the vessel full speed astern.

Q. Did you go to the bridge?

A. Right out the chart room, jumped out, put the engine full speed astern.

Q. Did you make any remarks to anybody at the time?

A. Said we had struck a mine.

Q. Why did you say that?

A. Because there was mines laid around there; it was a thing you naturally expected to meet any time; we all thought she had struck a mine; we thought we were clear of land, didn't think there was any danger from the land and there was lots of mines in the vicinity, you see, there at all times.

Q. Now, did you see any indication of breakers in the vicinity at the point where you struck?

A. Breakers about a mile on the port bow, from half a mile to a mile.

Q. How was the water in the immediate vicinity of the ship?

A. Nothing to indicate any shoals at all, fairly smooth.

Q. How was the weather at that time, at the time you struck?

A. The weather was cloudy, overcast, heavy swell from the S. E., a swell not a sea, kind of a gloomy morning.

Q. Was there any wind to speak of?

A. Blowing in gusts, just like after a gale of wind was finished; we had been in a gale for three days, just the finishing up of the gale, just finishing—squally, gusts.

[fol. 72] Q. Did you take soundings by the ship?

A. None, not till she was ashore.

Q. What soundings did you find afterwards?

A. We got about 15—12, 2½ fathoms that would make 15 feet forward, amidships 5 fathoms, 30 feet, astern we got the same, 5½ fathoms; she was afloat everywhere but on the bow.

Q. Did you examine the ship at that time and if so what was the condition you found?

A. Everything was all right, everything, the ship was all right except at a time there after a while, a couple of hours after she began to make water, the tank was pierced so that the outside water was getting oily and we knew she was pierced.

Q. Could you make any definite examination to find out how and where she was pierced?

A. No, sir.

Q. Did you find out later?

A. We found out because No. 2 tank began to run down.

Q. What efforts were made to release the Llama, if any?

A. As soon as she was ashore the wireless operator was instructed by the officer there to wire Kirkwall.

Q. By which officer?

A. The prize officer or the armed guard officer—that the Llama was ashore, wanted assistance; in a while there was two torpedo boats off, a couple of towboats, they sent all the assistance they could, plenty, but they put hawsers aboard and they would last about ten minutes and then break off their hawsers, the two torpedo boats put lines aboard and they broke in about ten minutes, then sent two trawlers out and their lines would break.

Q. What were these vessels trying to do?

A. Trying to pull her clear, to get her off, afloat again, but it seems she had been pierced, that there had been a rock up in No. 2 tank and they could slide around any way they wanted but she could not move, they could not get her clear, she was simply pierced.

[fol. 73] Q. Do I understand that she was pivoting on this rock?

A. Pivoting on this rock, they could turn her any way they wanted but she would not go astern.

Q. Well, how long did she continue on the strand and what happened then?

A. She continued till that evening—till the evening there and the tanks began to go, the water began to flow into her, she was open to the tide, the bulkheads begin to go and that evening the crew went to Kirkwall, sent the crew there for safety, we went aboard the guard boat called the Evening Star, went aboard again in the morning and efforts were made to pull her off again.

Q. This was—the stranding occurred on what date?

A. On October 30th.

Q. The 30th or 31st?

A. The 30th, I think, sir.

Q. According to the log book that date is the 31st?

A. Nine o'clock on the 31st.

Q. And then when did you finally leave the vessel?

A. We left the vessel I think November 2nd—we left her that night and returned the next morning and that evening we abandoned her for good.

Q. Why was she abandoned?

A. Because she was full of water and we were scared that No. 7 tank had given way and the oil was going into the engine room, we pulled the fires there, there was danger of an explosion.

Q. Did you consult with these various officers from the vessels that were there as to what should be done, how did you arrive at the method of procedure?

A. When they came there they took complete charge of the vessel.

Q. Who are they?

A. The naval authorities from Kirkwall, they advised to abandon and I refused to abandon personally, they asked me—told me to get off and I said no, I won't get off—but they took charge of all operations and all procedure, eventually that evening we had to abandon.

Q. What evening was this, the first or second day after?

A. The second day after.

[fol. 74] Q. What was the last you saw of the vessel?

A. We went to Kirkwall—I will have to refresh my memory from the log, it is four or five years.

Q. This log book however seems to end on the 31st of October?

A. That is when the crew left.

Q. Here is another one ends the 3rd of November?

A. I think it was about the 5th when she went to pieces eventually, we went to Kirkwall I think the day after this and every morning used to go out there, the British Government put a boat at our disposal, myself and the engineer, to go and have a look at the wreck until she fell to pieces, I think she broke up about the 5th.

Q. Did you see her in that condition?

A. Yes, sir, see her when she was finished.

Q. Did you save any of the cargo?

A. Absolutely nothing was saved, the two boats that the crew went ashore with were saved, that is about all.

Q. Why didn't you save the cargo, what was the reason?

A. The cargo when she was pierced and the bulkheads gone, opening up the tanks, to the tide, we tried to get her off, but there was no means, she was pierced and when the bulkheads began to go she was practically open, the sea came in and washed the oil out, there was nothing to save.

Q. Captain, you have stated certain courses that you took under the direction of the officer in charge of the armed guard, I should like to have you go to that chart which I have obtained of the vicinity and first put down approximately as nearly as you can where you say the stranding took place?

A. Yes, sir.

Q. Have you marked about where it took place?

A. Yes, sir.

Q. Suppose you draw a red circle around that cross?

Witness does as requested.

Q. Captain, tell me how you arrived at the place of the stranding, what do you base your statement on?

[fol. 75] A. On the course as steered, working right back from the time that we—from the course given at 7:45 up to the time.

Q. Were any bearings taken of the vessel at the point of stranding?

A. Yes, sir.

Q. Who took those bearings?

A. Mr. Ricca, the chief officer.

Q. Did you yourself verify them roughly or in any way?

A. Roughly and then we all took bearings for that matter but we arrived at N. 4 W. Noup Head, and arrived at the conclusion that bore No. 4 W. and Sacquoy about S. 63 W.

Q. At that time did you determine approximately where the vessel was, that is when you were on the strand?

A. Yes, sir.

Q. And this is where you have now marked on the chart, is that where you determined at the time?

A. Yes, sir.

Q. Now, captain, you have said, as I understand that the last course you were on was a southerly course?

A. S. by E., three-quarters E.

Q. Suppose you take a rule and lay down for us from the point of S. by E. three-quarters E., was that magnetic?

A. Yes, magnetic.

Q. Was your compass magnetic?

A. Not one degree out of any course, finely adjusted, Ricco had been on the vessel two voyages and we took bearings every time they were available and there was no trouble?

Q. What course is that?

A. S. by E. three-quarters E., that is the last course, this was 9:07 when she went ashore.

Q. Just mark this last course up to the point where you stranded?

A. Seventeen minutes.

Q. Where do you get 17 minutes?

A. The ship made eight knots an hour from 8:50 to 9:07, that would give us 17 minutes, that is from 8:50 to 9:07, that is 2.3 miles on that course.

[fol. 76] Q. Now, captain, I ask you to lay down, if you say 2.3 miles from the point of stranding, go back on that course?

A. Yes, sir.

Q. Have you done so?

A. Yes.

Q. You have pointed up there where you have the course under the figure 20 on the chart, is that right?

A. Yes.

Q. Now, from that last point, captain, let us run back your preceding course, what was that?

A. S. E.

Q. Run that back and see where that brings you?

A. S. E., that was 8:40 to 8:50, 10 minutes, 1.3 miles, that is the S. E. course, sir.

Q. You have laid down the course on the chart, you have marked above the end of that course the figures 8:40, suppose you take the blue pencil here and circle that last point with a small circle around it?

Witness does as requested.

Q. Now, from that last point, captain, will you run back again the course preceding?

A. S. one-half W., that was the original course started at daylight.

Witness does so, designating with a blue B.

Q. Now, put a C opposite the 8:40 there, a D opposite the next point over 20 and an E opposite the red circle?

Witness does so.

Q. Captain, according to your testimony this change of course S. to S. E. which was made at point C as indicated on this chart was headed for some landmark, I understand, was it?

A. Yes.

Q. Suppose you just project that line C-D on the same course and see where that brings up, continue it right from the D?

Witness does so.

Q. Where does that touch the land?

A. Just a little to the southwest of Stennis Hill, I think they call it.

[fol. 77] Q. What is the height as shown on that chart of that land?

A. About 299 feet.

Q. What does it show on the chart, it doesn't look that way to me?

A. 218 feet.

Captain answers after looking at the figures through the magnifying glass.

Q. What point was it that you said the prize officer indicated as being the land for which he wanted to head?

A. He says that is Fersness.

Q. Fersness, is that what you mean?

A. Yes.

Q. Suppose you call that Fersness highland with a pencil and mark it way off here with a big K?

Witness circles the land marked Fersness and draws an arrow pointing to it and places the letter K beside it.

Q. I ask you to encircle Stennis Hill and mark that with an F.

Witness does so.

Q. Now, captain, I would like to have you take Fersness Hill which you have marked with an F and run a S. E. magnetic course back from Fersness Hill, back to the vicinity of C.

A. Yes, sir.

Q. Mark that line which you have now drawn at the westerly end with some letter, say, H, in blue, so that will be marked.

Witness does so.

Q. Captain, what was this little line here you drew on the chart, did you draw that line between the E and the red circle?

A. Yes, sir.

Q. What was that line?

A. That was supposed to be the bearing of Noup Head.

Mr. McGrann: If counsel does not object, I would like to erase that line because it is confusing; I will leave some record of it, but it is confusing.

[fol. 78] Mr. Phillips: Can you dot that line, that will make it distinctive?

The line which the witness indicated was the bearing from Noup Head is now indicated by blue dots.

Q. That line that you indicated as the bearing from Noup Head and which you have now indicated in blue dots does not represent any course which you were on at this time?

A. No; the bearing of Noup Head when she was ashore.

Q. To summarize your testimony, captain, as to the courses, I understand that you first came down on the line B C which was S. one-half W., which is marked S. one-half W. and that you then changed the course at point C and took the course marked on the chart C D which you say is S. E., that you then changed course at point D and took the course which you have already marked S. by E. three-quarters E., shown by line D E, leading to the point indicated by the red circle and which is the point of stranding, is that correct?

A. That is correct.

Q. Now, you have also drawn a line here, an extension of C D which is marked D F on the chart and which leads to Stennis Hill and at my request you have drawn a further line H K which represents the line of the course S. E., leading to Fersness highland?

A. Yes, sir.

Q. How do you account, if you can account, for the fact of your stranding at the point marked with a red circle E if at any time you were heading for the Fersness highland on the S. E. course?

A. Well, the officer, the naval attendant in charge must have mistook Stennis Hill for Fersness, when he seen what he thought was Fersness it must have been Stennis Hill; if it had been Fersness

he would have been all clear; he thought he saw the head that was Fersness, but he was heading for Stennis Hill.

Q. In order to make that plainer to me will you extend this line B C down to meet that line H K; suppose you dot it so that it won't [fol. 79] be confusing with the others.

A. Yes, sir.

Witness does so, draws a red dotted line from C to meet the line H K.

Q. According to the testimony if the point for which the prize officer headed was Fersness highland and you were on the course S. E. in accordance with that instruction, where would the change of course have been made as shown on the chart?

A. The course should have been changed to H K.

Q. I mean at what point?

A. Where the red dotted line reaches the line H K.

Q. That we will mark with the letter L; is that correct?

A. Correct.

Q. You had better draw a circle around the intersection.

Witness does so.

Q. You said there was some landmark which induced the change of course to the southeastward, S. by E. three-quarters E.; can you indicate what it was on this chart?

A. We sighted two small islands, the Holms.

Q. Will you circle those with a big circle on the chart?

A. The Green Holms.

Q. Mark that with a big M.

Witness does so.

Q. What course would have been pursued, if you know, after passing through Westray Firth?

A. She would have headed for these points here (indicating the Holms), not heading for the Holms, keeping them a little on the port bow, we would have been clear of all dangers.

Mr. McGrann: I offer this chart in evidence as illustrating this witness' testimony.

It is marked libellant's Exhibit 5.

[fol. 80] Q. Now, as to the times of these changes of course, I may say to you that it has already been testified by one of the officers, Jensen, that this change of course to the southward, that is the last course you were on at the time of the stranding was made at 8:53, you have assumed that it was 8:50?

A. 8:50.

Q. Would that discrepancy of three minutes make any substantial difference in the courses as you have laid them down there?

A. No, sir.

Q. It has also been testified by this officer, Jensen, that he placed

the time of stranding at 9:10, whereas you have said 9:07, would that three minutes make any material difference in the courses you have laid down?

A. Seems to be three minutes' difference everywhere.

Question repeated.

A. None; no, sir.

Q. Did you see these breakers which you have testified you thought you saw after the vessel stranded, prior to the stranding, or were they reported to you in any way?

A. They were not reported to me, but I believe I seen them after—it was common knowledge then after the officer in charge of the armed guard had said everything was all right.

Q. Were there any breakers or were there any shoals or rocks in the immediate vicinity of the place where the Llama stranded?

A. None, sir; seemed all clear.

Q. It is alleged in the seventh article and the fifteenth article of the answer filed in this case that "while proceeding through the Westray Firth navigated by her officers and crew," etc., referring to the time immediately preceding the stranding; what have you to say as to the allegations that Llama was being navigated by her officers and crew at this time?

A. She was not navigated—we were under direct orders of the officers of the armed guard, whatever orders he gave was passed [fol. 81] through me, passed to the officer through me, to the crew, the officer on duty at the time.

Q. Did you or did you not initiate the course S. E. which you have laid down as C D on Exhibit 5?

A. No; I initiated no course, all courses were initiated by the British lieutenant.

Q. Did or did you not initiate the course D E which you have laid down on libellant's Exhibit 5?

A. No, sir; had nothing at all to do with the courses.

Q. Did you have any further conversation than that which you have already testified to in respect of a choice between going through Westray Firth and through the Fair Island Passage, with the prize officer?

A. No; only I asked what was the reason he was going through Westray Firth, I said—the general passage was through the Fair Island Passage, I said, what is the matter with the Fair Island Passage; well, he says, there is submarines operating around there and it is better to get in as quick as we can, or words to that effect, general conversation.

Q. Do you know how the tide was during this passage through the Westray Firth?

A. As far as I understand it was running ebb, just the turn of the tide at that time.

Cross-examination by Mr. Phillips:

Q. Captain, what licenses do you hold?

A. United States unlimited license and a British license.

Q. You hold them now?

A. Yes, sir.

Q. After the stranding of the Llama did you make a protest?

A. Yes, sir.

Q. Who took that protest?

A. In Dundee the United States consul.

Q. Did you at any time make any kind of a statement under oath to the British officer known as the Deputy Receiver of Wrecks at Kirkwall?

A. Yes.

Q. You made such a statement, made oath to it?

A. Yes.

[fol. 82] Q. Do you remember when that was?

A. That wasn't until the first or the second—probably the third of November.

Q. Could that have been the 2nd of November?

A. It was the day after arrival in Kirkwall.

Q. The matters relating to this stranding were at that time fresh in your memory, were they not?

A. Yes, sir; they were.

Q. Were the statements made by you the truth of the matter?

A. The truth as they struck me at the time.

Q. That is the time it was fresh in your memory?

A. Yes, sir; it was very fresh.

Q. In the course of your employment as master of the Llama, had you at any other time previous to this been boarded by a British cruiser at sea?

A. Four times.

Q. You stated you were bound to Copenhagen or some Scandinavian port by way of Kirkwall?

A. Yes, sir.

Q. You had orders to call at Kirkwall, however, before you left the United States?

A. Yes.

Q. Have you ever been in the naval service, captain?

A. No, sir.

Q. You have not?

A. I was in the reserve during the war, not previous to that.

Q. When did you leave the naval service?

A. In February.

Q. What were the circumstances attending your leaving?

A. I was disenrolled.

Q. For what reason were you disenrolled?

A. The war was over and to return to civil employment.

Q. Were you at any time court-martialed while in the navy?

A. No, sir.

Q. When this prize officer, as you call him, came on board your vessel, did he state that you were to take his direction as to the navigation of your ship?

A. He never mentioned anything.

Q. He did not?

A. No, sir.

[fol. 83] Q. Had you been through Westray Firth before?

A. The trip before.

Q. Captain, you were overhauled by this British cruiser in latitude 58.45 N. I believe, and longitude 11 degrees something W.?

A. Yes, roughly.

Q. Wouldn't that be considerably to the south of Westray Firth?

A. No, it must be to the north—it is to the southward, yes.

Q. Do you know how far south of Westray Firth that is?

A. No, I can't tell you.

Q. You may look at the chart, Libellant's Exhibit 5?

A. Yes, that is to the southward.

Q. What is the latitude of the fairway into Westray Firth?

A. The latitude?

Q. Yes.

A. 59.15.

Q. Now, if, as you say, you were bound to Kirkwall by the way of Fair Island passage, that would take your ship considerably to the north of Westray Firth, would it not?

A. Yes.

Q. And your course shown would be pretty well to the north?

A. Yes, we would have went well to the north.

Q. Were you on the great circle?

A. Yes.

Q. From the point out off the banks known as the Corner,—where did you start your great circle course?

A. Right from New York, not the corner, we never traveled that way.

Q. I am to understand then that as soon as you got clear of the coast you put the ship on the great circle for what point?

A. On the great circle for to clear Cape Race first and then away to the north.

Q. Then after clearing Cape Race did you keep as far as—

A. To the Pharaohs if necessary.

Q. Then on a great circle on a course which would take you to The Pharaoh Islands?

A. No, bound to Kirkwall on the great circle that would take us far north as they were to make the Fairway Passage.

[fol. 84] Q. So that at the time you were boarded by this British officer you were then pursuing the great circle track to the north of the Orkney Islands?

A. To the north of the Orkney Islands.

Q. After the arrival of the British officer did you take any sights?

A. No, no sights after the arrival of the prize officer.

Q. Was the weather such that sights could have been taken?

A. I think we took an evening sight, that was 5 years ago at the present time, but we had our position well in hand.

Q. From previous sights?

A. Yes, up to the time of making Noup Head everything was correct.

Q. Between the time you were boarded by the British officer and the time you made Noup Head did you take any sights or make

any calculations to ascertain the course to be taken to reach Noup Head?

A. Yes, sir.

Q. On the day of the stranding, captain, and from the time your ship was headed on the course S. one-half W., did any one on your ship take any soundings?

A. None.

Q. I understand that your vessel approached land about nightfall?

A. Yes, sir.

Q. And that your vessel laid off until daylight?

A. Yes.

Q. Who decided to lay off?

A. The officer in charge—the prize officer.

Q. You didn't decide to lay off?

A. I agreed with him it was better to stand off, looking after the interests of the owners.

Q. Did the British officer at any time give any orders to the officer of the deck?

A. Not to my knowledge—he had done—I mean not to my knowledge.

Q. Did the British officer give any order to any of your crew directly?

A. None.

Q. Do you recall the magnetic course your ship was on at the time you were overhauled by this British ship?

A. We were laying to at the time, bad weather.

[fol. 85] Q. What course had you been steering up to the time you were hove to?

A. Till we were pulled up?

Q. Yes.

A. I am not positive.

Q. You may refresh your memory from the log?

A. I think S. 70 E., on the regular great circle course whatever it was.

Q. On the great circle course for The Pharaohs?

A. Yes, S. 70 E.

Q. Captain, this great circle course you have referred to, where did that begin?

A. Well, the great circle from here, I don't know exactly.

Q. I mean this particular one you were on at the time you were hove to, where did that begin?

A. I couldn't say at the present time.

Q. You may refresh your memory from the log?

A. Always on the great circle coming and going, this must have been, we started from New York, the great circle coming this way, comes through Cape Race, you cannot go over the land.

Q. Wasn't your ship on a composite course or a mercator course?

A. No, not on a mercator course, on a composite or great circle.

Q. You had a composite course?

A. Yes.

Q. The idea being to get your ship in such a position as you could with safety and quickness on the great circle?

A. Yes.

Q. Well now, what was the position of that point where you begin to get on the great circle?

A. We were steering N. 80—

Q. Would it be about on the Grand Banks?

A. No, before that, it would take us to the north of Newfoundland altogether, the north of the Banks, 66, 75, 80—she went on this course about October 18th.

Q. What was your position at that time?

A. The position at that time at noon, 44.01 N. 55.46 W.

Q. At that point you took up the great circle?

A. I believe so, I took the great circle when it was first available, I mean when the land was clear, I have no chart here.

Q. I am trying to find out what you did, not what you would do, this is your recollection of when and where you got on the great circle?

A. Yes.

Q. And the great circle course from this position you have just described, latitude 44.01 N. longitude 55.46 W. the great circle course from that position was to take you north of the Orkneys?

A. Clear of the Orkneys, up Fair Island Passage.

Q. Up until the time you were boarded by the British ship you stayed on that track as laid down?

A. Yes.

Q. Do you know such a place as North Rona?

A. Rona Island it is, yes.

Q. North Rona?

A. Yes.

Q. Will you indicate that on the chart libellant's Exhibit 5?

A. We must have a bigger chart here besides this—10:35 on the 30th of October—it is up in the 60's.

Q. North Rona is then north of the Orkney Islands?

A. Yes, north of that chart.

Q. It is in fact north?

A. Must be close on to 60 N.

Q. North latitude?

A. Yes.

Q. That would be about 35 miles north of the Orkneys, wouldn't it?

A. About that, yes, sir, here is the position here, 59.17 at noon of this date.

Q. Of which date?

A. Of the 30th, this was 9 o'clock we will say 59 N. and 5.30 W.

Q. I just wanted you to locate the position of North Rona, it is in fact about 35 miles north of the Orkneys?

A. Yes.

Q. At any rate it is in about 60 degrees north latitude?

A. Yes, 59.17 we were steering east, about 59.20 say, 59.30 will be safe.

Q. It is to the north and east of the Orkneys?

A. Yes, sir, well to the north and east.

[fol. 87] By Mr. McGrann:

Q. Is it to the east?

A. Yes, sir—5.29 W.—to the westward of the Orkneys.

By Mr. Phillips:

Q. To the north and west then?

A. Yes, sir, it is to the west of us.

Q. Do you know the place called Skule Skerries?

A. Yes, sir.

Q. Where is that?

A. I guess that is where we struck.

Q. You struck on Skea Skerries?

A. Well, we passed this on our way too.

Q. You don't know where that is, do you?

A. Not at present, I can't recollect, if I had a chart I can tell.

Q. It is not on any of these charts?

A. Not on any of these charts.

Q. If you went to Kirkwall, captain, by way of North Rona, which way would that take you?

A. To North Rona?

Q. Yes.

A. Which way—I believe that would take us—North. Rona must be to the west and not on this chart, this is only a local chart.

Q. From your knowledge of its location, how would you say the course to Kirkwall by way of North Rona would be shown on this chart?

A. On this chart?

Q. Yes, such part as would come on this chart?

A. It would take us to the westward—I mean past Westray Firth.

Q. Past Westray Firth?

A. Yes.

Mr. McGrann: I ask right here that the stenographer please turn back to some of the questions counsel has asked about this witness being in the naval reserve and re-read those.

Stenographer does so.

Mr. McGrann: I state on the record here at this point that as [fol. 88] to the service of the witness in the naval reserve I consider this immaterial to the issues in question. Counsel has stated that he thinks they are material. Without any knowledge of the record of this witness I say to him that he is bound to answer counsel's questions although they do not in his mind have a direct

bearing on this case. It is for counsel cross examining him to show later that they do have a direct bearing and I presume counsel is prepared to do so. Now if there is anything in your naval record which will incriminate you, you are at liberty and I advise you as counsel, to decline to answer on the ground that they would tend to incriminate you. If however such is the case you may state so freely or you may state exactly what the circumstances are connected with your naval service as you choose. Now before going any further I should like to ask if this is entirely clear to you, what I have said, and if you wish to give counsel full information concerning the whole of your naval record, why you are at liberty to do so, if you know the meaning of what counsel asked or if you do not wish you would so state.

The Witness: I was court-martialed in Cardiff.

By Mr. McGrann:

Q. What was the nature of any difficulty you may have had?

A. Intoxication, I claimed I had the flu and was charged with being drunk.

Q. And you make this statement now freely, do you, that you were in difficulties—did you plead guilty or not guilty?

A. Not guilty.

Q. Do you consider that you were guilty of the charge?

A. I consider I was not—we had put four officers in the hospital in Nancy through the grippe or flu and I had the flu myself and I thought it was my business to bring the ship back to her base, which I did so.

[fol. 89] Mr. McGrann: I will rest here and I also wish to say on the record that I don't want any question raised whatever as to trying to conceal anything about this testimony.

By Mr. Phillips:

Q. In answer to an earlier question on cross examination you stated that you had not been court-martialed?

A. I had been.

Q. At the time you made that statement did you know that you had been court-martialed?

A. Yes, I did, but I was ashamed to admit it.

Q. That statement, it was false then?

A. I would have admitted it but I was ashamed to admit it.

Q. That statement was false?

A. No—I believe, I mean I don't know, you know as much as I do—it wasn't false to a certain extent.

Q. It was not the truth, was it?

A. I never received any orders from court-martial.

Q. But at the time you answered that question you knew you had been court-martialed?

A. No—yes, I did.

Q. So that statement was not the truth?

A. It was not correct.

Q. It was not the truth, was it?

A. No.

Q. Were you advised of the finding of the court-martial?

A. No.

Q. Do you know the reason why you were not advised?

A. No.

Q. Captain, if I tell you, if I say to you that the Secretary of the Navy advised the Attorney General that on November 30, 1918, the proceedings, findings and sentence in your case were approved, on the 26th of February the sentence was confirmed by the President and that the order of dismissal which was the finding in this case was not served on you for the reason that you had in the meantime deserted, what would you say to that?

A. I say I am very sorry, that is all.

[fol. 90] Q. Is that the fact of the case?

A. Not to my knowledge, you can understand this case as well as I can, a man was so ashamed that he could not show his face—everything I done was after the armistice—

Q. But on leaving the service did you receive any orders to leave?

A. I received no orders, I did not desert, I was under arrest and it never—

Q. Was that arrest lifted or were you freed or given any order to return to inactive duty?

A. No.

Q. And if I say to you that the Secretary of the Navy has also advised that you are now a deserter at large, what would you say as to the truth of that?

A. Well, I would say that I don't know nothing about that, this is what I can't see, how they can do that, but at the same time I was so ashamed of myself that I didn't know what to do on the job; I have suffered more than they have ever suffered, I can tell you.

Mr. McGrann: I presume that counsel's object in this is to challenge the veracity of this witness.

The Witness: That is it—could you strike out of the record about my denying that in the first place, or would you do so?

Mr. Phillips: I couldn't.

By Mr. McGrann:

Q. Have you ever consulted me about this particular matter?

A. Never mentioned in any way, shape or form.

Q. In making your statement to me you have never mentioned that?

A. No; never mentioned naval service to you at all.

Mr. McGrann: I may say and of course counsel will accept it that if the matter had been brought to my attention by this witness I would have advised him to be very frank, although it might incriminate him, and to state exactly what every circumstance was

that had any bearing on his naval reserve service, I don't consider [fol. 91] that the point of what happened to him is material to the points at issue in this case except counsel's statement that he is challenging the witness' veracity.

Mr. Phillips: That is the purpose of that line of questioning.

By Mr. Phillips:

Q. Captain, in this statement you say you made to the Receiver of Wrecks at Kirkwall, do you recall that statement?

A. Well, yes, roughly, the main points of it.

Q. Do you recall having said in that statement that Noup Head—the Westray was ahead about four miles to the N. E., about 8 P. M. on the evening of the 30th and that you decided to lie off the land until daylight?

A. Yes.

Q. You made that statement?

A. I or we, it should have been we.

Q. What did you actually say?

A. I don't know, that is five or six years back, but you must remember in that time we simply came in—I mean just simply came in after the loss—I might have said I or we.

Q. Did you sign that statement?

A. I made a signed statement before him, yes.

Q. Did you read the statement you signed and swore to on that occasion?

A. I think I had a copy of it at the time.

Q. Did that statement contain the statements you made, were they properly set forth in it?

A. I am not quite sure, the statements I made—I made another statement before the consul in Dundee which was made up probably 10 or 15 days afterward—but this Receiver of Wrecks, that was simply the loss of the ship.

Mr. McGrann: Which statement is this you are referring to?

Mr. Phillips: One made in Kirkwall before the Receiver of Wrecks and another one made before the Consul General in Dundee.

[fol. 92] Q. Now, in your statement before the American consul at Dundee you say that the prize officer decided to lie off Noup Head?

A. Well, he had full control of the ship from the time—I have been under these prize officers about ten times, not less than ten times during the war, and when they come abroad they have full control of the ship; we are simply under them; we obey their orders in every particular, although they pass the order from themselves to me and I pass it to the officer of the deck and then to the crew.

Q. Well, in the statement made right after the stranding you say you decided and in the statement made some 10 or 12 or 15 days later you say the prize officer decided?

A. Whatever he decided, I decided; he had the first decision and I obeyed his orders implicitly.

Q. Both of the statements are under oath?

A. I or we in that case is complete.

Q. But they differ?

A. They cannot be different, they follow the same main basis of the stranding, they must come together because the thing is correct.

Q. On the night you arrived off Noup Head did you have any conversation with the British officer as to what was to be done then?

A. The idea was that we would stand off until daylight and if it cleared up during the night we would proceed in, the weather was gloomy and dark and the first chance we would make in for Kirkwall through the passage.

Q. Did you say to the British officer that you would wait for daylight and then proceed through Westray Firth as you had gone that way the voyage before and knew the Firth?

A. I knew nothing about the Firth—I had been there——

Q. Did you say that?

A. Not to my knowledge.

Q. Are you sure whether you did or not?

A. I didn't to my knowledge.

[fol. 93] Q. You mean you may have said it and don't recall it or that you didn't say it?

A. I might have said I was through the Firth before, but I knew nothing about it, I don't recall that, he claimed he had been through the Firth, that he been doing duty out of Kirkwall and knew the Firth.

Q. If I were to tell you that the British officer made a statement saying among things that the captain of the Llama requested that we should wait for daylight and proceed through Westray Firth as he had gone that way the voyage before and knew the Firth, what would you say to that?

A. We have a statement here from Ricco saying that we held off and was going in through the night if it cleared, I never done nothing without he initiated it.

Q. When the British officer came on board did you say to him that you would conduct the navigation?

No, sirree—no, sir.

Q. Even though the British officer stated that you did tell him that, if the British officer stated that it is not correct?

A. It is not correct.

Q. I believe I understood you to say that when this highland was sighted the British officer told the man at the wheel to steer for that?

A. He pointed to the land and told him to steer.

Q. Do you recall his language?

A. No, I was probably 3 feet away.

Q. Did you hear him say to the man, steer for that highland?

A. I heard him speak to the man at the wheel and direct with his hands, steer for that.

Q. Did you hear what he said?

A. No.

Q. You don't know what he said?

A. No, but——

Q. You don't know what he said to the man at the wheel?

A. No, I didn't hear.

Q. You are not sure, you didn't hear?

A. He pointed out and said steer for that, somewhere to that point or words to that effect, he instructed the man to steer for a point of land and emphasized it by pointing to the land.

[fol. 94] Q. One more question, captain, at the time you were on the course S. 78 degrees E., that is the course you were on before you hove to?

A. S. 70.

Q. S. 70 E., that was magnetic?

A. Magnetic.

Q. What was your variation at that time, and place?

A. Variation, probably 19 W.

Q. So that your true course would be what?

A. Our true course would be to the right of that, not to the left of it, what was it, S. 70 E.?

Q. I would like to have you refresh your memory from the log?

A. S. 70 E. on the course, you mean the last course?

Q. Before you were boarded by the British cruiser?

A. We were hove to, laying to, I believe.

Q. I mean the course before you hove to?

A. S. 70 E., 7:30, the British officer boarded 8 o'clock, S. 70 E.

Q. Before you hove to?

A. S. 68, various.

Q. When did you heave to?

A. On the 28th, the 27th, 2:30 half speed.

Q. 3:35 P. M., October 27th, you hove to?

A. Yes.

Q. From then until after the British officer came aboard you didn't steer any particular course?

A. Various courses, laying to the wind.

Q. Before that time, 3:35 P. M. on October 27th your course was what?

A. The course was E. by S. one-half S.

Q. By the compass?

A. Yes; Standard compass.

Q. Any deviation on that heading?

A. No; pretty clear.

Q. Was that course by standard or magnetic?

A. Magnetic.

Q. And the variation was 19 W.?

A. 19 W.

Q. Your true course then would be about 88, wouldn't it, N. 88 degrees?

A. N. 88 E. true course.

Redirect examination by Mr. McGrann:

Q. To continue this course, prior to the boarding, I notice in the [fol. 95] logbook which has been marked libellant's Exhibit 2 for identification that at 7:10 P. M. on October 27th you changed course

to S. by E.; will you just take a look here, captain, and then on October 28 the last recorded course is S. 68 E., followed by various, up to 8 o'clock A. M. on the 29th, when you have S. 70 E., is that as you remember it?

A. Yes; we were laying as close to the wind as we could.

Q. What date was that?

A. 27th, strong easterly wind, strong gale here.

Mr. McGrann: Well, I object to the testimony as to the course prior to the boarding as being immaterial and ask counsel to point out how it is material.

Mr. Phillips: Anent that, proctor for respondent states that he considers this testimony as to the course to be highly material and expects to show that in proper time.

By Mr. Phillips:

Q. Just one question, with reference to the changes of course just referred to in the last question; were those changes of course necessitated by the existing weather?

A. Bad weather, before making—before the boarding, you mean?

Q. Yes.

A. By the weather.

Q. And your destination had nothing to do with those changes of course?

A. Nothing at all.

By Mr. McGrann:

Q. Well, had you received any course then up to the time you were boarded?

A. No; we was laying to, the morning we were boarded.

Q. The first course set was intended for what destination?

A. Towards Kirkwall.

Q. Would that have been the same course that you would have set if you had not intended going in the Westray Firth?

A. Yes; the same course.

[fol. 96] Q. Now, you have been cross examined about certain statements you made at Kirkwall or at Dundee, did you then know or had you worked out at that time just exactly the courses and distances run?

A. No; we had only worked out the probable position of the ship when she was ashore on the courses that was steered from the time of leaving Noup Head in.

Q. Did you consider that you stranded on a rock, captain?

A. I thought it was at that time, she is a little to the westward of the Skerries and at that time I thought it was an uncharted rock, something not on the chart, there is no place by the bearings that would have put her on the shoals.

Q. Did you have any conversation at the time of the stranding with the prize officer as to whether or not it was an uncharted rock or whether it was lying ashore off Skea Skerries?

A. I do not think after the stranding I had much conversation at all because we were all busy with our own affairs, the first boat that came along took the prize officer off the ship and I don't think I had any conversation with him after she was ashore.

Q. Do you recall now anything in the statements which you have made at Kirkwall or Dundee or elsewhere, immediately or within the several days following the stranding that are incorrect?

A. As far as I understand they all agree—agree with the main facts; I can't see where they differ—the main facts which was at the extension of the protest in Dundee should be the same as it is now, except I might have used I instead of we or he, that is the only difficulty, to the owners it was always I.

Q. Did you at any time accept responsibility for this stranding?

A. Never.

Q. Did you at any time, under oath or otherwise, make any admission that you were responsible for the navigation of the vessel?

A. No, sir; whenever any prize officer came aboard, I always put myself second to him.

Mr. Phillips: I move that the witness' answer be stricken from the record, as it is not responsive.

[fol. 97] Q. I am referring particularly to this occasion?

A. No, sir.

Q. Captain, you appreciate that counsel has attached significance to circumstances that have been developed by your services in the naval reserve and that you have expressed some regrets at this service and the outcome, and have now said that there was an episode which you were ashamed to deal with and I ask you in all solemnity and I state to you that you are under oath, and bearing that in mind, I want you to say whether or not the circumstances that you have described here about this navigation through Westray Firth are wholly true, or whether you had in any way misconstrued the situation knowingly?

A. Everything I have said regarding the Llama and all connected with her—her loss and so on—is the honest truth and can be upheld by the statements of all officers or all men, who will certainly verify my statements in everything I have said, and it is the absolute truth and no more; I am doing all this free, just to do what I think is right to the owners of the vessel, not for any benefit to myself nor any benefit to or trying to hurt the officer in charge at the time or anything like that, just because I think it is honest and just, no more nor no less. All during this period of the war I have been probably taken in about eight or nine different times by the Germans, the French and the English, and in all the cases where these troops come aboard the master and all hands were subordinate to them and they all thought themselves so—the idea was to get the ship through with as little trouble as you could so as to get her released from the port of examination; whatever they said went at all times. I was on the first vessel that was arrested in 1914 after war broke out, and the officers refused to obey the orders

of these armed guards and they simply took the thing in their own hands and done what they felt like doing.

Mr. Phillips: I move that the witness' answer be stricken out as immaterial.

[fol. 98] VALENTINE STUART COX, being duly sworn and examined as a witness for the respondent, testified as follows:

1 Q. State your age and present residence?

A. Hadlow Wood, Willesden, near Chester, 27.

2 Q. At the time of the outbreak of the war between Germany and England were you a member of the Royal Naval Reserve?

A. Yes.

3 Q. On what date did you enter on service?

A. In October, 1914.

[fol. 99] 4 Q. What rank?

A. Midshipman.

5 Q. And you held that rank until what time and to what grade were you advanced?

A. Till April, 1915, when I was advanced to sub-lieutenant.

6 Q. And you were commissioned at the rank of lieutenant when?

A. In August, 1916.

7 Q. Prior to October, 1914, had you any experience at sea?

A. Yes, I had been at sea since I was 16 years old.

8 Q. And at that time did you hold any certificates in the Merchant Service?

A. I held a certificate in the Merchant Service in January—February, rather, of 1913.

9 Q. What rank?

A. Second mate.

10 Q. Was it for unlimited tonnage and unlimited waters?

A. Unlimited tonnage, unlimited waters.

11 Q. State whether or not the second mate's British license is the lowest or what grade of license?

A. It is the lowest grade at which you can become a certified officer.

12 Q. At the time you joined the Navy in October, 1914, did you still hold the same certificate?

A. I still hold the same certificate.

13 Q. Please state what experience you had as an officer from the time you received your certificate until the time you entered the Navy in October, 1914?

A. I was an officer in the Royal Mail Steam Packet Company; I was first of all fifth, then fourth and then third. Third is the first watch-keeping officer. I was watch-keeping officer for close on a year—not quite.

14 Q. And, as a matter of information, just exactly in what trade had the vessels run?

A. When I was fourth and fifth officer we were running to the

West Indies and New York; and when I was third officer I was running down to Brazil.

15 —. What cruiser were you attached to after you entered the Naval Service?

A. I was attached to the "Virginia," a merchant cruiser.

[fol. 100] 16 Q. Exactly what service was the "Virginia" assigned to?

A. She was patrolling in Northern waters.

17 Q. State whether or not you were by the "Virginia" continuously from the time you joined her in the end of 1914 until after the time the "Llama" stranded?

A. I was continuously on her books, although at times I was away with these boarding parties.

18 Q. And during the period I have stated exactly what assignment did you have on board the "Virginia"? By "the period I have stated," I mean between December, 1914, when you joined her, and the time of the stranding of the "Llama"?

A. I was held for boarding duties and also as assistant navigator.

19 Q. Just explain in a little detail what you mean by boarding parties?

A. It means the boarding of any ships that come along and going in with them to Kirkwall, if necessary.

20 Q. Did you have a crew who accompanied you?

A. Yes.

21 Q. Of how many men did the crew consist?

A. I had four men.

22 Q. Was that the usual number in all cases of boarding vessels?

A. Yes.

23 Q. What rank were the men made up, the four that accompanied you on these boarding duties?

A. One was a first-class petty officer, one was a seaman, one was a stoker and one was a marine.

24 Q. Were these men armed?

A. Yes.

25 Q. State how each was armed?

A. The petty officer had a Service revolver and a cutlass; the seaman and stoker had revolvers and the marine had a rifle.

26 Q. What purpose was served by having these men armed?

A. The purpose for which they were armed was in case a German submarine had already boarded this vessel and the crew had been put on board—we were able to defend ourselves.

[fol. 101] Mr. Symmers: I object to this question and move that the answer be stricken out as incompetent.

Mr. Staley:

27 Q. At the time of counsel's interruption had you completed your answer, Lieutenant Cox?

A. Well, not quite.

28 Q. Just complete it.

(The stenographer read the last question and answer to the witness.)

A. And also for any other defense purposes that were necessary.

29 Q. State whether or not you were the lieutenant in charge of the guard which boarded the tanker "Llama" off Kirkwall in the latter part of October, 1915?

A. I was.

30 Q. Do you recall about when you boarded her and about the position of the ship approximately?

A. I do.

31 Q. Please state it?

A. Approximately 400 miles to the westward of the Orkney Islands.

32 —. And the date?

A. The date was the 28th October.

33 Q. The testimony of the master gives it as the 29th October, do you recall whether it was the 28th or 29th, to be exact?

A. I may be wrong; it is a long time ago.

34 Q. Who boarded the vessel with you?

A. My guard; my men whom I had with me.

35 Q. Consisting of how many?

A. Four.

36 Q. Did anybody else come aboard the "Llama" from the "Virginian"?

A. Nobody else.

37 Q. At the time you boarded her?

A. Nobody else.

38 Q. Now, lieutenant, just tell us exactly what took place when you came aboard—where you boarded, whom you saw, whom you spoke to and what was said?

A. I boarded her on the port side just below the bridge, and I was met on the deck when I boarded by an officer.

39 Q. Do you know which one it was?

A. I could not tell you.

[fol. 102] 40 Q. It is immaterial?

A. Then I was taken to the captain, who, to the best of my recollection, was on the bridge. We then went in the cabin and went over his papers; that is the ship's papers and manifest. I then went on the bridge and signaled my investigation to the cruiser, who gave me orders to proceed with the ship to Kirkwall.

41 Q. Were any directions given you then as to any course, or where you were to proceed to?

Mr. Symmers: I object to that and call for the orders. If it is to be more specifically given than so far indicated by the witness, let him tell what flags were displayed and the exact meaning of the flags.

A. It was sent by semaphore.

Mr. Staley:

42 Q. Did you read the semaphore yourself?

A. I personally read the semaphore myself.

43 Q. Tell us what the message was as near as you recollect it?

A. As near as I recollect it, it was: "Proceed to Kirkwall, keeping to the northward of Scule Skerry and North Rona." I think those two places were the other way round if I recall it to mind. "You are not to pass between the islands during the hours of darkness."

44 Q. Those are very well-known landmarks?

A. Yes.

45 Q. — were they with respect to the Orkney group?

A. Well, I think I am right in saying they are about 130 to 180 miles west of the Orkney Islands. I am not sure of my distances; it is some considerable way.

46 Q. Now, after the messages had been passed between the "Virginian" and yourself, what next followed?

A. I turned to the captain who was on the bridge and we went into the chart house, as near as I can remember; and I told him that the orders had come through as to the course to steer.

47 Q. Which was what?

A. It was to keep northward of these two islands.

[fol. 103] 48 Q. What islands?

A. Scule Skerry and North Rona, and I asked him if he would navigate the ship, to which he replied that he would. The captain then laid off the course as near as I can remember to Noup Head; and then he gave the order to—asked me, rather, if he could proceed; so I said, "Yes"; and he gave the order, "Full speed ahead," and set the course.

49 Q. Who laid off the course on the chart?

A. The captain.

50 Q. Who gave the directions for setting it?

A. The captain.

51 Q. State whether or not you took any part whatever in the navigation of the ship on that course?

Mr. Symmers: Objected to as a statement of a conclusion.

Mr. Staley:

52 Q. Answer the question.

A. I took no part in laying the course off; the only part I took was in looking after it afterwards to see that it complied with my orders from my captain.

53 Q. And that was what?

A. That was to pass to the northward of North Rona and Scule Skerry. The course did that and so I never mentioned it again.

54 Q. I want to ask you at this point when you came aboard what did the members of the crew do—the four men whom you brought with you?

A. They dispersed. When we came aboard they remained on the upper deck and one man went on the bridge; the others dispersed in

time to quarters that had been allotted to them by the captain of the ship.

55 Q. And during the period they were on board did the men stand regular sea watches?

A. Yes, they stood regular sea watches, one on the bridge all the time.

56 Q. For what purpose was that?

A. That was to keep a lookout for submarines or any untoward things that might happen detrimental to the ship or to us.

[fol. 104] 57 Q. By the way, lieutenant, were you and your men a prize crew?

Mr. Symmers: Objected to as a statement of a conclusion.

A. No, we were not a prize crew; we were merely what they termed an armed guard. We took no responsibility of the ship and had nothing to do with the navigation of it.

Mr. Symmers: I move that the last part of the answer be struck out as not responsive and as stating a conclusion.

Mr. Staley:

58 Q. Now, as I understand it, the master laid the course towards Noup Head?

A. Yes.

59 Q. And the ship was set on that course?

A. Yes.

60 Q. What happened after that so far as the navigation of the ship was concerned or the laying down of courses, or discussions, or what not?

A. The captain laid all courses down and he always informed me what he had done.

61 Q. During the time who was actually on the bridge as officer in charge?

A. The captain.

62 Q. He would not be there constantly?

A. Or one of the ship's officers.

63 Q. And who was at the wheel?

A. One of the ship's crew.

64 Q. Did your men attend the wheel at all at any time?

A. No, never.

65 Q. The course was set towards Noup Head, when was it changed about and what was the occasion for the change, if any?

A. We made no change of course until we sighted Noup Head to the best of my recollection; and then it was only to dodge around or what they call heave to until the morning.

[fol. 105] 66 Q. Do you know what day he sighted Noup Head, assuming that you boarded her on the 29th October as the master states?

A. Sighted Noup Head on the 30th.

67 Q. What time of day?

A. Well, on the afternoon.

68 Q. Did you go in past Noup Head that night or did you lay off during the night?

A. Oh no, we lay off well clear of the land.

69 Q. Was there any conversation between yourself and the master of the "Llama" as to the course you should take from Noup Head to Kirkwall?

A. Yes.

70 Q. When was that and state exactly what the conversation was?

A. That was during this evening; I cannot remember the time, but it was after we have hove to; the captain of the "Llama" came to me and said could he go through the Westray Firth.

Mr. Symmers: May I interrupt?

Mr. Staley: Interrupt now and make the objection so that we can continue.

Mr. Symmers: May I interrupt to ask whether in the cross examination of the master a proper foundation was laid for this testimony which you now seek to put in. I do not recall it.

Mr. Staley: The master testified as to certain conversations concerning the course to be followed.

Mr. Symmers: But was he specifically asked whether the conversation you now seek to bring out was had?

Mr. Staley: He referred to this conversation. Whether the exact words were asked the witness I do not know, but the captain undoubtedly has given his version of the conversation. This is as I recall it, of course. I read the testimony; I was not present at its taking.

Mr. Symmers: I will object to it on the ground that no proper foundation has been laid for it.

[fol. 106] A. I replied to him that I did not know the Westray Firth, having never been through it before. He said, "Oh, that is all right, I have been through; I went through my last trip." I said, "If you know the passage, captain, you can make it as far as the Government is concerned."

71 Q. Was there any discussion at that time about any other passage?

A. He mentioned that it was more preferable than the Fair Island passage.

72 Q. State whether or not you previously had used the Fair Island passage?

A. I personally have always used the Fair Island passage before, not knowing the coast too well.

73 Q. And do I understand you to say that prior to that time you had never been through the Westray Firth to Kirkwall?

A. No, I had never been through at that time.

74 Q. Have you ever taken a ship through subsequently?

A. No, I have never taken a ship through subsequently.

75 Q. Following the conversation, state whether or not any course was charted through the Westray Firth the following morning?

A. We charted a course—or rather the captain charted a course through the Westray Firth the following morning.

76 Q. Now, which is correct; did you or he or together?

A. No, the captain himself; he showed me the course afterwards.

77 Q. The captain of the "Llama" charted the course himself?

A. Yes.

78 Q. Was there any conversation had after the course was charted?

A. No.

79 Q. And can you give us about what time that was; the date of the month if possible and the hour as near as you can. I may say that the "Llama" stranded on the morning of October the 31st?

A. It was on the morning of October 31st, and it was some time [fol. 107] after 6, but certainly before 7 o'clock when we set the course for the Westray Firth.

80 Q. Who laid the course on the chart?

A. The captain.

81 Q. Who gave the directions as to the course to follow?

A. The captain.

82 Q. Did you hear him give the directions?

A. I cannot say that I did hear him give them.

83 Q. Did you give any directions at any time?

A. No, I gave no directions.

84 Q. At any time?

A. No.

85 Q. By the way, lieutenant, what time did you turn out on the morning of the 31st October?

A. I turned out at 6 o'clock in the morning.

86 Q. And what time had you your breakfast, about?

A. Some time just about 8.

87 Q. And what time did you come out from breakfast?

A. It must have been about half-past 8.

88 Q. Were you out practically after that time until after the time of the stranding—by "out" I mean on deck or in the chart room or the neighborhood of the bridge?

A. Yes, I was out the whole time.

89 Q. Please state in sequence just exactly what happened so far as you observed it after you came out from breakfast?

A. I came out from breakfast and I went straight out on the bridge; I had a look round and then went into the chart room where the captain was, and he showed me the position of the ship. I had a few words with him about what he was steering.

90 Q. Do you recall exactly what was said?

A. I cannot recall what was said, but he just gave me to understand that he was going through the Westray Firth.

Mr. Symmers: I object to this unless this witness can recall the language or approximately the language of the captain.

[fol. 108] A. And then I went out on the bridge again and saw breakers on the port bow.

91 Q. How much on the port bow?

A. I should say about a point or half a point.

92 Q. And how far distant about?

A. One to two miles, I should think.

93 Q. Go on.

A. I then went into the chart room again and told him what I had seen, and suggested that he had better take steps to clear it, which he immediately went out and did.

94 Q. Who was in charge of the bridge at the time?

A. One of the ship's officers.

95 Q. Was he standing right there on the bridge?

A. He was on the bridge at the time.

96 Q. Did you say anything to him?

A. Never spoke to him.

97 Q. Only spoke to the master?

A. Only spoke to the master.

98 Q. Did you ever speak to the man at the wheel?

A. Never.

99 Q. What happened after that?

A. The captain altered his course about 4 points, I think. Then very soon after that we struck.

100 Q. Where did you strike?

A. On the bow.

101 Q. Do you know what obstruction you struck?

A. Well, there is no doubt in my mind that we had gone on rock.

Mr. Symmers:

102 Q. Do you mean on the bow or the stem?

A. On the stem. Well, bow I should call it.

Mr. Symmers:

103 Q. The bow you mean?

A. Yes.

Mr. Symmers:

104 Q. The stem of the boat?

A. Yes, I do not mean bang up against the stem.

Mr. Symmers:

105 Q. You do not mean the port bow or the starboard bow; you mean the stem?

A. Yes, the forward part of the ship.

Mr. Staley:

106 Q. Forward near the stem?

A. Yes.

[fol. 109] 107 Q. Do you say the master was on the bridge at the time?

A. He was on the bridge at the time.

108 Q. Had he come out on the bridge before you struck?

A. Yes.

109 Q. How long?

A. Well, he came out to alter course; I could not say how long.

Mr. Staley: I produce Admiralty chart of the Orkney Islands numbered 2180; this is a British chart. I am only going to show it to the witness to ask him where the vessel stranded. For that purpose there is no difference.

Mr. Symmers: No difference between where our witnesses put it.

Mr. Staley: There is no dispute, candidly speaking, as to where she stranded; there is no doubt about that.

110 Q. May I have you indicate the point where you stranded? I will hand you my pen and ask you to mark it.

A. That is the position (indicating on the chart).

111 Q. Will you just draw a circle?

A. Somewhere in that circle (marking the chart).

112 Q. May I ask you to initial it "A" to the right. (The witness marked the chart.) What place is that?

A. That is the Skea Skerries.

113 Q. Is that a well-known charted obstruction there in the channel way of Westray Firth?

A. Yes, it is a very old obstruction.

114 Q. Approximately how wide is Westray Firth there?

A. About 4 miles I should think.

Mr. Symmers:

115 Q. I understand you to say it was a familiar obstruction?

A. It is an old obstruction; I mean to say it is not a new obstruction there.

Mr. Symmers:

116 Q. Well, no.

A. It is not familiar to me personally.

Mr. Symmers:

117 Q. It is well known to all navigators?

A. Yes, all navigators.

[fol. 110] Mr. Staley:

118 Q. So that I may have it definitely on the record who laid down all the courses after you had passed North Rona and the Scule Skerries?

A. The captain.

119 Q. You mean the captain of the "Llama"?

A. Yes, the captain of the "Llama."

120 Q. Who actually plotted them on the chart?

A. The captain of the "Llama."

121 Q. Who gave directions, so far as you know, of the courses to be pursued by the officer on the bridge or the quartermaster?

A. The captain of the "Llama."

122 Q. State whether or not at any time you gave any directions of any kind whatever either to the officer in charge of the bridge or the quartermaster on the "Llama"?

A. At no time did I ever give any orders to the crew of the "Llama."

123 Q. Or to any of the officers in charge of the bridge?

A. Yes.

124 Q. Is that correct?

A. That is correct.

125 Q. At the time you struck was there any doubt as to your striking a rock or obstruction?

A. Not in my mind.

126 Q. Was there any indication whatever that you had struck a mine?

A. I never saw any; there was no indication to me that we had struck a mine.

127 Q. Just exactly, what was the effect to the ship when you did strike?

A. Well, the ship stopped and then there was a grinding; at least, I should say there was a bang and a grinding and then the ship brought up all standing.

128 Q. What did you do immediately after the ship struck?

A. I sent a wireless message into Kirkwall to the naval officer there, informing him that the "Llama" was aground at Skea Skerry and requested assistance immediately.

129 Q. And subsequently the "Llama" was lost, was she?

A. So I believe; I was not there.

[fol. 111] 130 Q. You were not there when she was lost?

A. No.

131 Q. How long did you remain by the vessel after she stranded?

A. I remained till about 5 o'clock on the day she stranded in the afternoon; then I went to Kirkwall in the tug with the rest of the crew and reported myself to the naval officer there who sent me into Scapa Flow to the depot ship, there awaiting transmission to my own ship.

132 Q. I forgot to ask you the weather conditions that morning; will you please state exactly what the weather conditions were?

A. Well, there was a slight haze, but not enough to obstruct navigation. The sea was calm and there was a light breeze, of what force I cannot say.

133 Q. Is it of any consequence?

A. Nothing to speak of.

134 Q. How far could you see?

A. You could see 6 or 7 miles I should think.

135 Q. Did you have any trouble seeing land?

A. No, no trouble at all.

136 Q. How far off were you, say, when you got under way after 6 that morning?

A. I should think the nearest land was about 8 or 9 miles away at the outside.

137 Q. The master of the "Llama" has been examined in this case (I am now referring to page 45 of the testimony), and was asked this question: "You said to him how are you going?" which was answered: "I said to him which way are you going, he went into the chart room, the chart was laid out, I got out the chart that he wanted, I says will we go through the Fair Island passage or through the Westray Firth; he says we will go through the Westray." State whether or not you had such a conversation with the master?

A. I had no such conversation.

138 Q. What is the exact fact?

A. I am taking it this was at the time I boarded her?

139 Q. Yes.

A. The only conversation I had with him was that we were to proceed north of North Rona and Scule Skerries, and not pass [fol. 112] through the islands in darkness. We made no mention at the time of which passage we would take.

140 Q. Did such a conversation take place with you at any time?

A. No.

141 Q. What was the exact conversation which passed between you as to the course the ship should take to go to Kirkwall?

A. Is this from when I boarded?

142 Q. At any time?

A. The only time was when I boarded or rather when I had my signal from the cruiser that we were to pass, as I say, north of North Rona and Scule Skerries and we were not to pass between the islands during the hours of darkness. Later the captain approached me and asked my permission to go through the Westray Firth. I told him at the time that I had never been through before and did not know the passage; but he said that the voyage before he had been through the Westray Firth and knew the way; so I gave my consent to going through that passage.

143 Q. Did he ever say to you, "We will go through the Fair Island passage"?

A. No, at no time.

144 Q. Did he ever suggest to you going through the Fair Island passage?

A. No.

145 Q. By the way, lieutenant, from Noup Head to Kirkwall, what is the difference in the distance by the route through the Westray Firth and the route through the Fair Island passage?

A. Well, I am not sure of the actual mileage, but I should think you gain about 50 miles by going through the Westray Firth.

146 Q. You gain 50 miles?

A. Yes.

147 Q. The captain further testified that you said to him that you knew the Westray Firth, knew the passage well. State whether that is correct? I now refer to his testimony on page 49.

A. That is not correct because I have never been through the passage before.

148 Q. And did you so tell him?

A. I told him.

[fol. 113] 149 Q. State whether or not you had anything to do with the laying down of the courses which the captain laid down through Westray Firth?

A. I had nothing to do with any of the courses.

150 Q. The captain says—I am now referring to page 50 of the testimony—that upon leaving Noup Head about 7:45 in the morning you said—the question was, “Did he say to you—meaning did you say to the captain—take this course S. $\frac{1}{2}$ W. or did you say to him? (A.) He says we will head S. $\frac{1}{2}$ W.”

A. I never said that.

151 Q. Did you ever give any compass courses at all to the captain at any time?

A. No, I never gave any compass course or standard course or magnetic course at any time.

152 Q. The captain throughout his testimony refers a number of times to you giving directions for particular courses; state whether or not at any time you ever gave any directions to the captain as to what course he was to follow?

A. Never at any time did I state to him any course in degrees which he was to steer.

153 Q. Or direction?

A. Or direction.

154 Q. State whether at any time you gave him any suggestions as to when he should make a change in course, except at the time when you saw the breakers ahead?

A. Never.

155 Q. At pages 50 and 51, the last question on page 50 and the early questions on page 51, the captain was asked and answered as follows:

“Q. Can you recall approximately how long he remained on that course, what change you made and the circumstances, if so please do so?

A. It was about 7:45 when we headed in on the course $8\frac{1}{2}$ W., about 8:10 we had the lighthouse abeam and we continued on that course until about 8:40 when he sighted”—referring to you—“he seen land on the port side which he thought was Fersness, he says there is Fersness, we will head for that. I said all right, he went to the wheelsman and said there is that point of land, steer for that. [fol. 114] all right we headed for that land about 8:40, we headed on that until about 8:50, then seen the two pieces of land, two small islands open up on the port side and he said there is the Holms, then altered the course, says we will head for that, then he said S. by E., we made for these two pieces of land, she was heading S. by E. $\frac{3}{4}$ E.”

State whether or not the actual facts are as the master has testified to there?

A. They most certainly are not.

156 Q. Did you know where Fersness was?

A. No, I never heard of the place.

157 Q. You had never been through that part before?

A. Never.

158 Q. Specifically did you give directions to the wheelsman to steer for that point?

A. No.

159 Q. At any time did you give any directions to the wheelsman?

A. No.

160 Q. Now, continuing with the master's examination on page 51:

"Now to go back, you said that the officer made out some land which he designated as Fersness, did he express this to you?

A. He expressed it loudly to everybody so that they could hear."

I understand you to say that you made no reference to Fersness at any time; is that correct?

A. No, that is correct.

161 Q. By the way, lieutenant, do you know whether the captain took off the charts which he used there in the chart house?

A. I could not say.

162 Q. They were there when you left?

A. They were then when I was last on the bridge.

163 Q. State whether or not at any time during the passage through Westray Firth at the time of the stranding, that is after you left Noup Head, you pointed out or designated any point of land to anybody on board the ship?

A. No.

164 Q. The captain again testified on page 67 in answer to this question:

"Did you have any further conversation than that which you have already testified to in respect to a choice between going through [fol. 115] Westray Firth and through the Fair Island passage, with the prize officer?

A. No, only I asked what was the reason he was going through Westray Firth, I said—the general passage was through the Fair Island passage, I said, what is the matter with the Fair Island passage; well, he says, there is submarines operating around there and it is better to get in as quick as we can, or words to that effect, general conversation."

State whether or not any conversation of that kind ever took place?

A. No, no conversation of that kind ever took place.

165 Q. Did you ever tell him that the submarines were operating round the Fair Island passage?

A. No, never.

166 Q. Was it a fact, were the submarines operating round the Fair Island passage at that time?

A. Not to my knowledge, but they were everywhere. We were

never allowed to talk anything about submarines or any other vessel of war whether enemy or our own with any merchant captains.

Mr. Symmers: I move that the last sentence of the answer be stricken out as not responsive.

Mr. Staley: Then at page 84 the captain says you told him that you had been through the Firth before. State whether or not you said anything like that to the master?

A. The Westray Firth I took that to be?

167 Q. The Westray Firth I mean.

A. No, I never stated anything about being through there before, because I had never been.

168 Q. Did you or did you not say that you had been through the Westray Firth before?

A. No.

169 Q. On page 8 of the testimony of Jensen, the third officer, who stood the 8 to 12 watch on the bridge of the "Llama" at the time of the stranding, testified as follows: "While the ship was being steadied on this course"—referring to a course she was being steadied on after you came on the bridge after your breakfast—

A. Yes.

[fol. 116] 170 Q. —"the prize officer pointed out to the man at the wheel a headland which he should steer for. When the ship came on a course of S. E. by Standard compass this course coincided with the information that the prize officer had given the wheelsman concerning the course the ship was to be steadied on." State whether or not you pointed out or gave any indication to the man at the wheel at any time of any course that he should take?

A. I never pointed out or gave any indication of courses to be steered by the man at the wheel.

171 Q. With reference to what occurred on the bridge just before the ship stranded Jensen testified as follows (page 12): "After I had steadied on the S. by E. three-quarters E. course, I went on the bridge again from the top of the chart house where the Standard compass was located, I kept a sharp lookout. Between the time of change of course and stranding I saw breakers on the port bow close aboard. The fact of seeing these breakers naturally aroused my curiosity and also made me entertain a certain amount of doubt if we would clear them or not. I notified the prize officer in person about these breakers that seemed to me to be rather close on the course we were on. I asked him his opinion about being on a safe course to pass these breakers. He assured me we were. Because of the fact that my duty kept me on the bridge all the time I had no access to the chart and presuming that the prize officer was naturally acquainted with the waters in this locality I requested him to inform me of the name of this reef. He said he was not sure of the name." State whether or not the conversation between Jensen and yourself took place as the third officer has testified?

A. I never held a conversation with him at all.

172 Q. At any time?

A. At any time.

173 Q. Did he report to you these breakers ahead?

A. No, I saw them myself and rushed into the chart room to the captain.

[fol. 117] 174 Q. But did he report that he saw them?

A. No.

175 Q. By the way, lieutenant, who made any observations that were made?

A. The ship's officers made them if they were made; I took none; I had no sextant.

176 Q. Were any observations of positions taken that you personally saw the officers take?

A. I am not sure of this; but I think the first night I was on board one of the officers took an observation and handed it to the captain.

177 Q. You had nothing whatever to do with it?

A. I had nothing to do with it. I may be wrong in what I say about the observation being taken, but I seem to remember it.

Cross-examination by Mr. Symmers:

178 Q. Lieutenant, how many other vessels, approximately, had you boarded in your capacity as boarding officer prior to boarding the "Llama"?

A. I should think 15 or 20.

179 Q. Have you ever boarded any vessel in the immediate vicinity of the place where you boarded the "Llama"?

A. Yes, I should think I have.

180 Q. Do you recall any particular vessel you boarded there?

A. No, I cannot recall any of them now by name.

181 Q. Could you say positively that you ever had boarded any other vessel within 50 miles of the particular place where you boarded the "Llama"?

A. Well, I should not like to say positively, because I have been moved about so much, although it was the same courses in.

182 Q. Never mind that. You would not undertake to swear that you had boarded any vessel within 50 miles of the place where this particular vessel was boarded?

A. No, I should not like to.

183 Q. Were you armed when you boarded the "Llama"?

A. Yes.

[fol. 118] 184 Q. That was pursuant to custom?

A. That is the custom.

185 Q. And pursuant to your instructions?

A. My instructions from the Government.

186 Q. Now when you boarded any vessel for the purpose of taking her in for examination you realized, I take it, that you were boarding a vessel that might possibly after examination at Kirkwall be the subject of prize court proceedings?

A. Yes.

187 Q. And that she might possibly be condemned as good prize?

A. Yes.

188 Q. So that you realized when you boarded any such vessel

that you were representing the interests of your Government, whatever they might prove to be, in that particular vessel?

X A. Yes.

189 Q. I do not know the value of the "Llama"; but, assuming she was worth, say, half a million dollars, or a million dollars, you would then realize that on boarding the "Llama" you were representing the interests of your Government, whatever they might be, in a vessel of considerable value?

Mr. Staley: This is objected to; the man was boarding under naval orders.

A. To the extent that I am to see that she gets to Kirkwall.

Mr. Symmers: Yes, you understand it was part of your duty to see that she got there?

A. Yes.

✓ 190 Q. And it was part of your duty in answering the interests of your Government to see that she got there, if possible, by the safest route?

A. By the safest route, yes.

191 Q. And in view of the presence of submarines in all quarters, especially where they were not expected to be, you recognized the [fol. 119] importance of getting every vessel that you boarded in as quickly as possible?

Mr. Staley: Is that prior to this time or subsequent to this time?

Mr. Symmers: Both prior and subsequent and at this time?

A. Yes, to get them in with all despatch.

192 Q. You did not regard yourself as merely a passenger on board this ship, did you?

A. I did as far as the navigation of the ship went.

✓ 193 Q. Oh, of course; but suppose a captain had suggested a course that did not meet with your approval, you assume yourself to have power to correct it?

A. Yes.

194 Q. That was one of the purposes of being armed, was not it; to compel the masters to do whatever you thought fit to make them do?

A. Only to a certain extent. If his course would take him to Kirkwall he could take that course, provided it was not against direct orders from the Government.

195 Q. Suppose upon being boarded he had said: "I do not want to go into Kirkwall with you; I am going to turn back and go to where I came from," what would you have done?

A. I should have informed the cruiser.

196 Q. And what would have been the custom of the cruiser?

A. That I cannot tell you.

197 Q. But, to the extent of your power, you had instructions to take him into Kirkwall, and to the extent of your power you would have obeyed those instructions?

A. Yes.

198 Q. And you had four or five armed men to assist you in that?

A. Yes.

199 Q. Where any of the crew or any of the officers of the "Llama" armed, as far as you had any information?

A. Not as far as I know.

[fol. 120] 200 Q. They complied with your requests or orders or direction, or whatever you choose to call them?

A. Yes.

201 Q. They gave you no opposition?

A. They gave me no opposition, no.

202 Q. You told the master you had these orders to take him into Kirkwall?

A. I said he had to proceed to Kirkwall.

Mr. Staley: I object to these questions; the master was already bound for Kirkwall and his bills of lading so read.

Mr. Symmers: I understand you to testify that you repeated to the master of the "Llama" the instructions you had received from the "Virginian"?

A. Yes.

203 Q. And did you repeat that to him accurately?

A. Yes.

204 Q. Just as received?

A. Just as I received them myself.

205 Q. And those instructions were, again, what?

A. To pass to the northward of North Rona and Scule Skerry and not to pass between the islands during the hours of darkness.

206 Q. Was there nothing with reference to taking the vessel into Kirkwall?

A. That was already received.

207 Q. Well, what was that?

A. I had signalled over that the ship's papers stated she was bound for Copenhagen via Kirkwall, and all I received back was this signal about keeping north of Scule Skerry and North Rona, and not to pass through the islands during the hours of darkness; and then they hoisted the signal, "Proceed on your voyage."

208 Q. Now was it "Proceed on your voyage," or was it "Proceed to Kirkwall"?

A. No; it was "Proceed." It was a signal that we had for proceeding.

209 Q. Now, do you wish to correct the testimony that you gave on [fol. 121] your direct examination to the effect that the semaphone instructions to you were to proceed with the ship to Kirkwall, keeping to northward of Scule Skerry and North Rona?

A. Well, as near as I remember: I mean to say it is five years ago this occurred. Certainly my orders were that I was to keep north of Scule Skerry and not to pass through the islands during the hours of darkness. Whether they actually made the signal to Kirkwall or just "Proceed," I cannot say.

210 Q. Now, lieutenant, those were official instructions you were receiving?

A. Yes.

211 Q. On matters which I take it would make some impression upon your mind. You now tell us that because of the lapse of time you are unable to give what those instructions were?

Mr. Staley: This is objected to; manifestly a matter of this sort is immaterial, irrelevant and incompetent.

A. I have taken plenty of ships and I got these different signals every time, and I am afraid one did not impress itself any more on my mind than another; these things happened over five years ago; I have had a good deal in my mind since.

Mr. Symmers:

212 Q. Did you pay any attention to signals you got or did you act upon your general understanding that all vessels boarded by you were to be taken to Kirkwall?

A. No; I took signals.

213 Q. But you cannot remember what the signal was specifically in respect of this one vessel?

A. I can remember quite plainly about North Rona and Scule Skerry, because it was the only time that I had those orders.

214 Q. You certainly did not gather—

Mr. Staley: I ask that the witness be permitted to finish his answer.

Mr. Symmers: I beg his pardon if he had not finished.

[fol. 122] A. And not to pass between the islands during the hours of darkness.

215 Q. You certainly did not gather the impression from your instructions that provided you passed between these places you have mentioned you were to go to Copenhagen?

A. No; certainly not.

216 Q. Did you gather the impression you were to take the vessel into Kirkwall?

A. Certainly, yes.

217 Q. You have two or three times mentioned the fact that five years has elapsed since this occurrence?

A. Yes.

218 Q. As explanatory of the uncertainty of your recollections in certain particulars. Your memory may be affected in other respects without your knowledge in which you have testified more positively, may not it?

Mr. Staley: The form of this question is objectionable; the witness has not shown any lapse of memory except with regard to very minor matters.

A. In what respect do you mean?

(The stenographer read the question to the witness.)

A. No; I do not think it is.

Mr. Symmers:

219 Q. Have you talked this matter over lately with anybody—the question of the character of testimony you would give?

A. I have seen a testimony I made.

220 Q. And have you discussed the matter with anybody?

A. No; not outside.

221 Q. I mean the testimony you expected to give here today?

A. No; not at all.

222 Q. Not with anybody—counsel or anybody else?

A. I do not quite follow you.

223 Q. You say you have talked with nobody about it—counsel or anybody else—about the testimony you would give here today?

A. No.

[fol. 123] 224 Q. Are you as positive about that as you are with respect to other statements you have made?

A. Yes.

225 Q. Now, do you realize as a boarding officer that if the United States Government be held liable in this suit in which your testimony is now being given, the United States Government would probably advance against your government, the British Government, a claim for indemnity?

Mr. Staley: This is objected to as manifestly incompetent and improper.

A. It is nothing to do with me.

Mr. Symmers:

226 Q. I did not ask whether it was anything to do with you; I asked you whether you realized that?

A. Well, I had not realized it; I had not thought about it.

227 Q. You never gave that any consideration?

A. No.

228 Q. Did you make any written report at the time to your superior officer concerning this stranding?

A. I made a report to my government.

229 Q. And did you obtain a copy?

A. I had a copy until the time when I left the service.

Mr. Staley: The government has a copy furnished by the British Admiralty which will be tendered to counsel, if they desire to see it; it is before me now.

Mr. Symmers:

230 Q. What did you do with the copy you obtained?

A. My copy I tore up when I left the service; I thought it was all finished with.

231 Q. Have you seen the original letter?

A. I have seen a copy of my original letter to my government since.

232 Q. And that is the document you have deposed to as having consulted?

A. Yes.

Mr. Staley: Counsel will add that the report which the lieutenant made and which he referred to is dated November 16th, 1915.

[fol. 124] Mr. Symmers:

233 Q. Do I understand you to say the captain of the "Llama" had posted your men or assigned them their positions after you and your men had boarded the "Llama"?

A. Not for watch keeping; he assigned them their quarters for living in.

234 Q. Those men were under your command, were they not?

A. They were under my command.

235 Q. Did you derogate your powers to the captain of the "Llama"?

Mr. Staley: That is objected to as to form; the facts do not warrant the question being put in that form.

Mr. Symmers:

236 Q. What had the captain of the "Llama" to do with posting your men?

A. I say he gave them their sleeping billets—assigned them their quarters.

237 Q. Were you present with the captain in the chart room when he was laying down these courses?

A. Not the first course.

238 Q. That is the course to the north of the Scule Skerry?

A. Yes.

239 Q. You told him about that course?

A. I told him what we had got to do.

240 Q. And he showed you the course afterwards?

A. Yes; I went out to see our ship in case there were any more signals coming there and he showed me the course afterwards.

241 Q. And you approved it?

A. Yes.

242 Q. So that when he was laying down that course you were with him in his chart room?

A. Sometimes I was with him and sometimes I was out on the bridge.

243 Q. At all times before acting upon any course which he had laid down tentatively he would tell you what he had done?

A. He had sometimes altered his course first and told me afterwards.

[fol. 125] 244 Q. Told you immediately afterwards?

A. Yes, within a short time afterwards.

245 Q. Before the course had been departed from materially?

A. Yes.

246 Q. It is the fact, is not it, that the captain always reported to you what he was doing until the time of the stranding?

A. Yes.

247 Q. Did you at any time suggest changes?

A. No, only the one time when I sighted this wash ahead.

248 Q. You had told him what your general instructions were?

A. I told him what the general instructions were.

249 Q. And he laid down these courses?

A. Yes.

250 Q. Showed them to you and you approved them?

A. Yes.

251 Q. And then he carried them out?

A. Yes.

252 Q. After 5 years can you say that you remember the exact language the captain used when he asked you some question with reference to going through the Westray Firth, as you testify?

A. I did not depose to that as the exact language which he used, but that was the idea of what he said.

253 Q. That is what you now understand the idea to have been?

A. Well, yes.

254 Q. Would you swear that he did use the word "should" he go through the Westray Firth, rather than "could" he go through the Westray Firth?

A. Well, he asked me if he could go through the Westray Firth.

255 Q. Well, you would not swear at this time, 5 years afterwards that he did not say, "Shall we go," or "should we go" through the Westray Firth?

A. No, I suppose I would not like to say that—which word he used.

256 Q. Now you state that the captain advanced the idea to you that it was preferable to take the Westray Firth rather than the Fair Island Passage?

A. Yes.

[fol. 126] Mr. Staley: I object to the form of the question; the testimony is not that the captain suggested it.

Mr. Symmers:

257 Q. I do not want to mislead you, Mr. Witness; my notes say, "He said"—meaning the captain said—"it was preferable to the Fair Island Passage"—referring to the Westray Firth passage.

A. He said he preferred to go that passage.

258 Q. Your language was as I have it noted: It was preferable to the Fair Island Passage.

A. Well, that is correct.

259 Q. Now did he advance any reasons why in his judgment it was preferable to the Fair Island Passage?

A. Not that I remember; he may have done at the time.

260 Q. In spite of the fact that you had always before hand gone by the Fair Island Passage, you did not ask him why in his judgment the Westray Passage was preferable?

A. No, because I know that certain boarding officers use the other

passage frequently. I am referring to the Westray Passage when I say the other passage.

261 Q. Do I understand you to say that to your knowledge other boarding officers sometimes used the Firth passage?

A. Yes.

262 Q. And your only reason, it being a shorter way, for not wishing to use it or in not preferring it on that occasion was your alleged unfamiliarity with it?

Mr. Staley: The form of this question is objected to; the witness has not expressed it in that way, but only as a selection made by the master of the "Llama." I think it is unfair to present the question in the form in which you are presenting it.

Mr. Symmers: Perhaps you misunderstood the question.

(The stenographer read the question.)

Mr. Staley: I will leave the record to stand.

[fol. 127] Mr. Symmers: I think in cross examination I have a right to ask that.

Mr. Staley: I will make an objection to it.

(The stenographer repeated the question to the witness.)

A. That is quite correct.

Mr. Symmers:

263 Q. After you came on deck after finishing your breakfast about half-past 8 on the morning of the 31st, you say the captain and you went into the chart room and the captain showed you the position of the ship?

A. Yes.

264 Q. And that you had a few words with him which you cannot remember?

A. No, they were just conversation.

265 Q. How long was that before the actual stranding?

A. I suppose it must have been just 20 minutes or half an hour.

266 Q. After the stranding how long was it before you sent word to the naval officer at Kirkwall?

A. Well, as quick as we could get it through.

267 Q. Immediately?

A. As soon as we knew what we had actually struck and could write out the message and give it to the wireless operator.

268 Q. You say it was a reasonably fair day: you could see where you were?

A. Oh, yes.

269 Q. Did not you know what you had struck immediately you struck it?

A. Well, we had an idea, but then you must take cross-bearings.

270 Q. Please do not use the word "we"; I am speaking with reference to what you yourself knew?

A. Well, I did not know at the time what we actually had struck.

271 Q. Did you know that you were on the Skea Skerries?

A. No.

272 Q. What did you do to find out where you were before you reported to the naval officer at Kirkwall?

A. The captain sent one of his officers to take cross-bearings.

[fol. 128] 273 Q. Did you chart those?

A. The captain charted them.

274 Q. Well, you say the captain did; were you with him?

A. Yes.

275 Q. In the chart room?

A. In the chart room.

276 Q. And you agreed that you were on Skea Skerries?

A. Well, we did not wait to agree; I mean I took it that we were.

277 Q. You did not differ from him?

A. No, I did not differ from him.

278 Q. And, acting on your judgment, you sent advices to that effect to Kirkwall and requested assistance?

A. Yes.

279 Q. And that you did of your own motion?

A. It was at the captain's motion, too; he asked me what was the best thing to do, and I said, "We will send a wireless into Kirkwall."

280 Q. And you did?

A. And we did.

281 Q. The captain did not act even after the stranding without consulting you, did he?

Mr. Staley: This form of question is objected to; the facts do not warrant suggestions as made in this form.

Mr. Symmers: The question is withdrawn.

282 Q. Do you know whether the Westray Firth was mined at the time?

A. I can only give you my knowledge of the thing, and my knowledge is that no mine could be buoyed in Westray Firth.

283 Q. So far as you know?

A. So far as I know.

284 Q. It was not mined?

A. No, it was not mined.

Re-examined by Mr. Staley:

285 Q. When did you leave the Government service?

A. In January, after the Armistice.

286 Q. 1919?

A. 1919, that is right.

[fol. 129] 287 Q. And have you been in Government service since?

A. No.

288 Q. Are you with the Government now?

A. No.

289 Q. Where are you located now?

A. I am a cotton merchant.

290 Q. Where?

A. In Liverpool.

291 Q. And you came over today at my request to give your testimony in this case?

A. Yes.

292 Q. You say you have refreshed your recollection from the report which was submitted by you at the time?

A. Yes.

293 Q. For purposes of identification only I asked you to identify the report and hand it to the stenographer to be marked (handing report to the witness).

A. Yes; that is the one.

Mr. Symmers: It is to be marked for identification?

Mr. Staley: For identification only.

(Same marked by the stenographer "Government Exhibit No. 1.")

DAVID CUNNINGHAM, being duly sworn and examined as a witness for respondent, testifies as follows:

294 Q. State your age and present residence?

A. 42; Mounthilly, North Queen's Ferry, Fifeshire.

295 Q. How long prior to the war had you been in the British navy?

A. Five years.

296 Q. In what capacity?

A. Well, I was in the ship all the time, you know.

297 Q. What as—what did you do?

A. Stoker.

298 Q. And when did you join the British cruiser "Virginia"?

A. I joined her on the 3rd of April, 1915, at Glasgow.

299 Q. To what duties were you assigned aboard the "Virginia"?

A. Doing odd jobs and guardsman.

[fol. 130] 300 Q. Were you one of the guards that boarded the "Llama" off the Orkney Islands in October, 1915?

A. Yes.

301 Q. Who was in charge of you?

A. Lieutenant Cox.

302 Q. He has been here in the office today?

A. Yes.

303 Q. How many men?

A. There were three men and the petty officer.

304 Q. Did you carry any arms that day?

A. Yes; side arms.

305 Q. And why was that?

A. Well, for protection; armed guards always carry side arms.

306 Q. State whether or not you stood regular watches while you were aboard the ship?

A. We did four hours each.

307 Q. Do you remember the morning the "Llama" stranded?

A. Yes.

308 Q. What was your watch?

A. 8 to 12.

309 Q. And you were on watch then, at the time of the stranding?

A. Yes.

310 Q. What was the weather condition that morning?

A. Oh, the weather was very clear.

311 Q. How was the sea?

A. The sea was very clear, very calm.

312 Q. How was the wind?

A. We had no wind at all.

313 Q. Had you gone with Lieutenant Cox in other circumstances as a member of a guard?

A. No.

314 Q. This was your first, was it?

A. Yes; first one.

315 Q. You came on watch at 8 o'clock?

A. Yes.

316 Q. Now, were you proceeding along?

A. Yes.

317 Q. Did you notice anything unusual at any time before you struck?

A. No; nothing at all.

318 Q. Did you make any report to anybody of anything ahead as you were moving along?

A. Yes; when I saw the rocks I reported to the officer.

319 Q. Just exactly what did you see? Describe what you saw.

A. I seen the sea breaking over the rocks.

[fol. 131] 320 Q. You could see the rocks yourself?

A. No; you could not see the rocks; you could only see the water.

321 Q. You could only see the breakers?

A. The breakers, that is all.

322 Q. Where were you at the time you saw that?

A. On the bridge on the port side.

323 Q. And what did you do then?

A. Reported to the officer.

324 Q. Who was the officer?

A. One of the ship's men.

325 Q. The man in charge of the bridge?

A. Yes.

326 Q. How far was the ship off, do you think, at the time you made this report?

A. It was between two and three miles.

327 Q. In what direction off of what bow was it?

A. Well, it was nearer the port bow, if it was anything.

328 Q. You, of course, felt the jar when you struck?

A. Yes; we did not feel land till we struck.

329 Q. Could you tell whether you struck a rock or a mine, without any trouble?

A. Yes.

330 —. What was it you struck?

A. A rock.

331 Q. And how did you know you struck a rock?

A. Well, we heard the sound, you see; we could tell by the sound.

332 Q. By the sound of the striking?

A. Yes.

333 Q. State whether or not at any time you heard Lieutenant Cox give any orders or directions or commands to the ship's officers or crew?

A. No.

334 Q. Who gave such orders as you saw on the bridge given?

A. Lieutenant Cox gave that to the armed guard; he always does give that to the armed guard.

335 Q. That is, Lieutenant Cox gives you the orders?

A. Our orders, but nobody else.

336 Q. Now I am asking did you at any time hear Lieutenant Cox give any orders or directions to the crew of the "Llama" or to the officer in charge of the "Llama"?

A. No.

337 Q. At any time?

A. No.

[fol. 132] Mr. Symmers: I have nothing to ask.

ERNEST EDWARD KNIGHT, being duly sworn and examined as a witness for respondent, testifies as follows:

338 Q. State your age and occupation?

A. Age 39, employed as a rigger.

339 Q. Prior to the war you had been in the Navy?

A. Yes.

340 Q. For what period?

A. For 12 years.

341 Q. Between what years?

A. 1898 I joined the service and was discharged in 6/2/12.

342 Q. Did you enlist again on the outbreak of the war?

A. Yes, called up by the Admiralty.

343 Q. When did you re-enlist?

A. On the 2nd of August, 1914.

344 Q. And when did you join the cruiser "Virginian"?

A. December, 1914.

345 Q. You were assigned to what class of duty on board the "Virginian"?

A. On joining the ship I was assigned as a boatswain's mate.

346 Q. And what about the time of the stranding of the "Llama" you were employed in what class of service?

A. Boatswain's mate.

347 Q. Were you a member of the guard which went aboard the "Llama" with Lieutenant Cox? A. Yes.

348 Q. What watch did you stand?

A. I took the 4 to 8 watch, the two dog watches.

349 Q. You had left the watch at 8 o'clock on the morning of the stranding?

A. No, I had the 4 to 8 in the morning, the two dog watches.

350 Q. Where were you in the morning?

A. In the morning I was down below.

351 Q. Had you come up on deck before the stranding?

A. Oh, yes, I was invariably on deck.

[fol. 133] 352 Q. And what was the first you knew about it?

A. The first I knew of the ship stranding was when she hit the bottom.

353 Q. Could you tell what she hit?

A. Certainly not, only just the jumping of the ship when she struck.

354 Q. Could you tell whether it was a rock or a mine?

A. You could tell it was a rock by the grinding of her plates.

355 Q. What part of the ship were you on?

356 Q. I was about amidship, port side.

357 Q. Were you looking ahead paying attention to things?

A. No, I was just stopped there having a breather; I was paying no attention.

358 Q. What were the weather conditions that morning at the time of the stranding?

A. Well, the weather at the time of stranding was smooth sea, light breeze, clear atmosphere.

Mr. Symmers: No cross examination.

ERNEST BROWN, being duly sworn and examined as a witness for the respondent, testifies as follows:

359 Q. State your age and residence please?

A. 24; 3 Bernard street, Leith.

360 Q. When did you join the cruiser "Virginian"?

A. 9th of December.

361 Q. What year?

A. 1914.

362 Q. And did you continue on her until last October and the early part of November, 1915?

A. The last of October, 1915?

363 Q. Yes.

A. Yes, I was aboard of her then.

364 Q. Were you a member of the guard which went aboard the "Llama"?

A. Yes.

365 Q. What rank were you?

A. Able seaman.

366 Q. And what watch did you stand on board the "Llama"?

A. Middle watch, 12 to 4.

[fol. 134] 367 Q. Where were you at the time of the stranding of the "Llama"?

A. On the bridge. At the time of the stranding?

368 Q. Yes.

A. On the forward well deck.

369 Q. And had you been there very long?

A. I cannot say.

370 Q. What was the first you knew of any difficulty?

A. Well, I just felt the shake of the ship.

371 Q. Could you see forward of you from the well deck?

A. No, I could not.

372 Q. Why?

A. You could not see above the forecastle if you stand on the well deck.

373 Q. You were just out getting air?

A. Yes.

374 Q. What were the weather conditions that day?

A. Very fine weather.

Mr. Symmers: No cross examination.

WALTER MIDWOOD JOHNSON, being duly sworn and examined as a witness for the respondent, testifies as follows:

375 Q. Please state your age and residence and occupation?

A. 98 Selborne street, Attercliffe, Sheffield; 25 years; engineman.

376 Q. Were you in the British Navy during the war?

A. Yes, the Royal Marines attached to the British Navy.

377 Q. You were a marine attached to the British Navy?

A. Yes.

378 Q. And when did you join the British cruiser "Virginian"?

A. On the 20th of April, 1915.

379 Q. Were you by her continually during 1915 after that date?

A. Yes.

380 Q. And what watch did you take?

A. On the "Llama"?

381 Q. Yes.

A. The morning watch.

382 Q. Between what hours?

A. The day she struck, I mean.

[fol. 135] 383 Q. Yes, the day the "Llama" struck, what watch did you stand?

A. The morning watch, 4 to 8.

384 Q. Who relieved you?

A. Cunningham.

385 Q. Who gave the orders to the wheelsman while you were standing watch?

A. The American officer on watch.

386 Q. State whether or not you heard at any time Lieutenant Cox give any directions or instructions to the crew of the "Llama" or the officers of the "Llama"?

A. No, not while I was there, not in my presence.

387 Q. State the weather conditions that day that the "Llama" stranded, will you?

A. Very good.

Cross-examination by Mr. Symmers:

388 Q. Did you notice anybody on the bridge while you stood on watch, say between 7 and 8 o'clock?

A. Just the officer and the man at the wheel and myself; that was the only three that were on.

389 Q. Did you see Mr. Cox about that morning?

A. Not at that time.

390 Q. What time?

A. Not till after 8.

391 Q. Where did you see him after 8?

A. He was on the bridge when she struck?

392 Q. Well, how long before she struck?

A. I could not say; I was down below when she struck.

393 Q. When was it you saw him on the bridge?

A. When I came up from below after she had struck.

394 Q. Was he by himself or was he standing with anyone?

A. He was with the captain and other two officers.

395 Q. What side of the bridge?

A. On the starboard side of the bridge.

VALENTINE STUART COX, being recalled on behalf of the respondent, further testified as follows:

396 Q. Mr. Cox, I will show you a copy of a letter from the Admiralty to the Foreign Office of the British Government sent at the request of the Embassy here relative to the instructions for officers [fol. 136] in command of armed guards belonging to the Tenth Cruiser Squadron on October 29, 1915, and ask you to state whether or not the instructions reported by the Admiralty were the instructions received by you and under which you were acting at the time you boarded the "Llama"? (Showing same to witness.) I will produce the original letter when it is received.

Mr. Symmers: I object to this as incompetent, irrelevant, immaterial, obviously intended by the British Government as the basis for the contention that the British Government could not be held responsible for the acts of its agents in the seizure of neutral vessels and the taking of such vessels into Kirkwall or elsewhere; also for the reason that it does not appear that these instructions were ever previously seen by the witness.

Mr. Staley: I may say that I have incorporated in my question that fact: whether he has seen them or not and secondly, whether he was acting under those orders at the time.

A. Yes; those are the regulations that we had given to us to read and to note when we commenced our armed boarding, and those were the ones that were in force at that time.

397 Q. You have seen those instructions before?

A. I have seen those instructions before.

398 Q. You were acting under the instructions at the time?

A. I was.

399 Q. And did you carry out those instructions with respect to what you did aboard the "Llama"?

A. I did.

Mr. Staley: I will have that marked.

Mr. Symmers: I object to the document as incompetent, irrelevant and immaterial.

Mr. Staley: May I ask counsel if he objects to it because it is not [fol. 137] now proven by the Admiralty or that if properly proven it would be irrelevant, incompetent and immaterial. Because if his objection is based on the first feature, I will have to, of course, at the proper time, call a representative of the British Admiralty to show that this is a communication from the British Admiralty and that it incorporates the orders which it purports to incorporate. I will offer the letter in evidence.

Mr. Symmers: It is admitted that the letter produced by counsel is a copy of the letter written by the British Admiralty to the British Foreign Office and is not objected to because it is a copy.

(Same marked by stenographer "Government Exhibit No. 2.")

GOVERNMENT EXHIBIT No. 2

(Stamp:) American Embassy, 5 Aug. 1920. London. N. L. 13877/20.

5th August, 20.

SIR: With further reference to Foreign Office letter No. K. 11492/4228/145 of 21st July, relative to the loss of the American S. S. "Llama," I am commanded by My Lords Commissioners of the Admiralty to acquaint you, for the information of the Secretary of State for Foreign Affairs, that in accordance with a request made verbally yesterday by Mr. C. C. Williams of the American Embassy they have examined the available records and find that the following were the standing instructions for Officers in command of armed guards, belonging to the 10th Cruiser Squadron, which were current on 29th October, 1915.

"Responsibility for the navigation of vessels sent in should never be undertaken unless absolutely necessary. The Master should be

✓
 "given the special route to be followed, the Officer in Charge of the [fol. 138] "armed guard exercising sufficient supervision to see that this is carried out and rendering any assistance asked for."

I am to request that Mr. Williams of the American Embassy may be informed accordingly upon receipt of this letter.

I am, Sir, your obedient servant,

The Under Secretary of State, Foreign Office.

(SCB.9497.)

Cross-examination by Mr. Symmers:

400 Q. You have been shown Government Exhibit No. 2 of this date purporting to incorporate certain alleged instructions for officers in command of armed guards; do you know when those instructions were first issued?

A. I could not say exactly when they were first issued; no.

Mr. Staley:

401 Q. Can you say about?

Mr. Symmers:

402 Q. Can you say when you first saw them?

A. Well, I think I am right in saying in January, 1915.

403 Q. Was that when you became an armed guard?

A. That was when I first—

404 Q. Do you know whether those instructions were altered or varied at any time from that time down to the time of the stranding?

A. Not to my knowledge.

405 Q. Can you say that you ever saw them since January, 1915, until today?

A. Yes; I have seen them since.

406 Q. When did you see them?

A. I saw them in another ship.

407 Q. What other ship?

A. The "Chester."

408 Q. When was that? Did you join her afterwards?

A. Afterwards; yes.

[fol. 139] Re-examination by Mr. Staley:

409 Q. Were these instructions kept aboard the cruisers?

A. Yes; they were kept in weekly orders.

I hereby certify the foregoing to be a true and correct transcript of the testimony of the witnesses herein.

P. A. Edmunds, for C. E. Barnett & Co.

[fol. 140]

IN UNITED STATES DISTRICT COURT

[Title omitted]

COLLOQUY OF COURT AND COUNSEL

During counsels' opening Judge Lynch called the attention of counsel to the fact that he had signed the answer while United States Attorney. The following stipulation was thereupon entered into:

It is stipulated between the parties that the answer herein signed by Judge Lynch when District Attorney was prepared in the Attorney General's office in Washington; that the Judge's signature thereto was purely formal; that he took no part in the preparation of the case, is not familiar with the issues or facts, and that the parties agree, so far as they are concerned, that no disqualification in any formal manner really exists and they agree to proceed with the trial before him.

[fol. 141] Mr. Kirlin: I offer in evidence and read the deposition of Christian P. Jensen, third officer, and Thomas Clinch, master of the steamer. The original deposition I will hand to your Honor.

The Court: You may make the further notation that at the time the testimony was taken Mr. Joseph L. Bodine was United States Attorney.

Mr. Ryan: I would like to press the motion to strike out the answers of the witness on the ground that it is a conclusion; on page 8: Q. Did you overhear a conversation, &c.; he says, "I do not recall the exact words he said, &c."

The Court: I will note your objection. I will eliminate from my consideration any conclusions of the witness and consider his facts only.

Mr. Kirlin: The logbooks having been identified, I now offer them in evidence.

Mr. Ryan: I object on the ground that the deposition of this witness who was the watch officer on the bridge at the time shows that he did not make any of the entries in the logbook, and that his information was that the entries were made relative to this stranding several days after the stranding and by an officer who wasn't even on the bridge.

The Court: All right; you may withdraw the offer at this time and renew the offer later.

Cross-examination read by Mr. Ryan.

Mr. Kirlin: At the end of that we renewed again the offer of the logs.

The Court: You may renew it at the close of all the testimony.

Redirect and recross-examination read by Mr. Kirlin and Mr. Ryan respectively.

[fol. 142] Counsel for libelant reads deposition of Edward Clinch, master of the ship.

Cross-examination read by Mr. Ryan:

Respondent offers a photographic copy of the statement under oath of the master.

Mr. Kirlin: I have not any information at all about it, but I will look at it and reply to my friend later.

The Court: Just pass it for the time being and give Mr. Kirlin a chance to look it over during recess between one and two.

Recess.

After Recess

Counsel proceed with the reading of depositions.

Respondent's counsel re-offers statement under oath before the Receiver of Wrecks.

Mr. Kirlin: With reference to that, your Honor, the only thing he asked him about was this one point and the captain has answered about that; now, it doesn't seem to me it is just to the captain, without showing him anything at the time or getting him to identify it or directing his attention to other things, that we should put in here an entire statement taken before the British Wreck Commissioner, who it must be seen, of course, had a contrary interest to the captain, because if the United States has to pay for this loss, why they will go to the British to get it back.

Mr. Ryan: That is entirely a conclusion of counsel.

The Court: I think I will admit it.

Libelant's counsel prays an exception, which is hereby allowed and sealed accordingly.

(Sealed.) Received and marked Exhibit R.

[fol. 143] Mr. Kirlin: Now, if your Honor please, I am required by the pleadings to produce the original policies of insurance and I therefore produce them; first the policy on the ship.

Received and marked Exhibit L. 6.

Also original policy on freight.

Received and marked Exhibit L. 7.

Issue is also raised as to filing of proofs of loss; these were, I find, presented through the owners' brokers, Messrs. Johnson & Higgins, and Mr. Ryan is good enough to agree that their letters might be put in in lieu of the evidence of a witness; so I offer the letter of Johnson & Higgins, dated January 11, 1917, to the War Risk Bureau enclosing proofs of loss and letter from the War Risk Bureau to Johnson & Higgins, dated March 17, rejecting the claim and sending back the papers, and to these are attached the papers submitted and sent back.

I ask that they may be all marked as one exhibit; amongst these are bills of lading, invoice, freight bills and so on.

Received and marked Exhibit L. 8.

I also offer these charts that have been marked for identification, libellant's Exhibits 1, 4 and 5. And I renew the offer of the log-books.

The Court: I will admit them unless there is an objection.

Mr. Ryan: Can I glance over them a moment to see what objection I have?

The Court: Yes, certainly.

Mr. Kirlin: Now, your Honor, the issue is raised also as to the ownership of the vessel. I offer in evidence copy of the bill of sale certified by the Collector of Customs of New York to be a true copy of the original sale of the S. S. Brilliant now on file in this office and of the whole thereof and that the said vessel was registered at this port under the name Llama on October 8, 1914.

[fol. 144] Mr. Ryan: I will make my objection if any to that—he says he is going to call a witness to show the fact.

Received and marked Exhibit L. 9.

I also offer certificate of the Secretary of Commerce and Navigation attested by the Assistant Secretary of Commerce, that the Llama, a vessel, is registered as a vessel of the United States on October 8, 1914, and awarded official #212682, signal letters L D T K and is, as appears by papers on file with the Bureau of Navigation, Department of Commerce, the property of the Standard Oil Company of New Jersey, a citizen of the United States, and that this company was the beneficial, actual and entire owner of said vessel prior to May 1, 1914.

Received and marked Exhibit L. 10.

I also offer certificate of the Collector of the Port of New York that, according to the records of this office, the steamship called the Llama of New York, official #212682, tonnage 3,189 gross, 2,011 net, built at Newcastle-on-Tyne, England, in 1890, was last documented in this office October 8, 1914, and in that document, namely, permanent register #38, the following are recited as her only owners, viz.: Standard Oil Company, incorporated under the laws of the State of New Jersey, and that no sale of said vessel has since been made. Certificate is dated January 31, 1921.

Received and marked Exhibit L. 11.

I also offer a certified copy of the permanent register #38 referred to in the certificate of ownership, libellant's Exhibit 11.

Received and marked Exhibit L. 12.

Mr. Kirlin: Might I ask your Honor to suspend the *the* usual form? Mr. Hand has been called away to the telephone and perhaps your Honor would agree to let us read the deposition of the prize officer at this point.

[fol. 145] Mr. Ryan: These proofs of loss of Johnson & Higgins are offered merely for the purpose of showing that you have made proofs of loss?

Mr. Kirlin: And also for the purpose of introducing these papers, showing what proofs of loss were made.

Mr. Ryan: But the exhibits attached to it are not themselves offered in evidence, except as showing that you made proofs of loss?

Mr. Kirlin: To the effect stated in those papers.

Mr. Ryan: But the truth of those proofs—

Mr. Kirlin: They show what was called to the attention of the War Risk Board.

Mr. Ryan: There is a great mass of matter here which the Government has not had the opportunity to cross examine as to the truth of those statements; I don't want to be put in the position of agreeing to the truth of them.

Counsel for the Government renews his oral request of counsel for the libellant and the libellant, that the libellant produce for examination of counsel for the Government and to be offered in evidence the original charts which were on the bridge of the Llama at the time of the stranding of that vessel on October the 31st, 1915, on which charts the master of the Llama laid out the courses from New York to Kirkwall, most particularly for that chart showing the absolute laying out of the courses by the master of the Llama from the time the Llama was overhauled by the British cruiser Virginia on October 29, 1915, until the time of the stranding of the vessel on October 31, 1915. This request and demand are made because the testimony of libellant shows that the Llama was on the rocks from October 31, 1915, at 9:10 A. M. until November 5, 1915, before she was abandoned and that numerous visits were made back and forth to the vessel by the master of the Llama and by other representatives of the owner of the [fol. 146] vessel from shore, and it is believed that the charts were removed at that time and the Government believes that they are most material evidence in this case.

Mr. Kirlin: I am not aware, in the first place, that there is any testimony that the master ever laid down any courses on any chart after the prize officer came on board or that there is any testimony to that effect; in the second place, I am not aware that the people that went out to the ship went on board in the chart room where these charts were after they were forced to leave her for the first time by the British authorities. In the next place, I call attention to the fact that the captain has testified that the British authorities took possession completely from the time of the stranding, and in the fourth place, as far as I know, no charts have ever been saved from her; at least, as far as I have seen any and I am not in position to respond to that call.

Mr. Ryan: Are you in a position, Mr. Kirlin, to state positively that none of the counsel in your law firm or associated or employed by you in your office have possession of those charts or know of the existence of them or where they can be found?

Mr. Kirlin: I am the first one who saw the witnesses when they

came ashore and asked for them, and they were unable to produce any or tell anything about any charts; we have never had any charts or seen any charts at all that were supposed to have been saved. I am in a position to go on now; my other witness has returned.

The Court: All right; proceed.

ROBERT F. HAND, called and sworn on behalf of the libelant, testified as follows:

Direct examination by Mr. Kirlin:

Q. How old are you, Mr. Hand?

A. Thirty-seven.

Q. Where do you reside?

A. Plainfield, N. J.

Q. How long have you resided there?

A. Practically all my life.

[fol. 147] Q. How long have you been connected with the Standard Oil Company of New Jersey?

A. Just a little over 18 years.

Q. What is your present position?

A. Assistant manager of the marine department of the Standard Oil Company of New Jersey.

Q. Is that the department that has the handling of the ships in the foreign trades?

A. It has the handling of all ships owned by the Standard Oil Company of New Jersey.

Q. Amongst others, of course, it handles the foreign boats?

A. Yes, sir.

Q. Were you in that department during the war, especially in 1915?

A. I was, yes, sir.

Q. In the same position?

A. In a similar position.

Q. Under Mr. Warden, David T. Warden?

A. Yes, sir.

Q. Was he at that time the manager of that department?

A. He was.

Q. Now, you had been there during 1914 also, had you, after the outbreak of the war and up to 1915?

A. I had been.

Q. Do you remember the Llama incident?

A. I do; I was directly in charge of it under Mr. Warden.

Q. Reference has been made by counsel for the Government to an arrangement between your company and the British Government for ships to call at Kirkwall. Do you remember the first ship that had instructions to call at Kirkwall, and the voyage of that ship in pursuance of that arrangement?

A. You mean other than the Llama?

Q. Yes.

A. I don't recall the exact ship, but it was early in the fall of 1914, to the best of my recollection.

Q. Had the Llama ever had instructions to call at Kirkwall prior to the voyage on which she left New York on October 14, 1915?

A. She had not.

[fol. 148] Q. So if she had gone into Kirkwall on a preceding voyage had she gone in there on instructions from the company?

A. She had not.

Q. Had she been taken in on a British prize crew on a previous occasion?

A. She had been taken in on previous voyages.

Q. Now, on this voyage what did the ship carry?

A. A cargo of case oil in bulk and 300 barrels of mineral coal oil and 30 barrels glue.

Q. What was the freight on the cargo?

A. The freight on the entire cargo was \$44,686.82.

Q. Was that freight lost by the loss of the ship?

A. It was.

Q. Was any part of it ever paid?

A. None of it has been paid.

Q. And was that freight that was insured under the policy for \$44,000 which has been put in evidence?

A. It was.

Mr. Ryan: Objected to on the ground it is asking for a conclusion of the witness.

Mr. Kirlin: No; I am asking for facts, whether that freight that you now mention, \$45,000 was the freight on which you took out this policy on which we are suing?

A. It was.

Q. And has the company ever received any part of that freight?

A. It has not.

The Court: Let me have the amount again.

The Witness: \$44,686.82.

Q. Now, there is a claim here also for certain disbursements that are alleged to have been incurred by the Standard Oil Company in consequence of this stranding, that are in paragraph 9 of the libel. The first item, "To allowance to the S. S. Wyco for going to the assistance of Llama, \$2,872.98." What were the circumstances [fol. 149] under which that expense was incurred?

A. The Wyco was instructed by our department to go to the assistance of the Llama with a view of either—

Mr. Ryan: Just a moment; before he answers the question I object to that question on the ground it is incompetent, irrelevant and immaterial on the ground that there is no evidence to show that these disbursements were covered by any policy that has been introduced in evidence.

The Court: The present question is, what is the nature of the charges? You may argue later whether they are entitled to recover for them.

Mr. Kirlin: We are claiming that under the sue and labor clause.

A. Coal, provisions, port charges and for the time lost.

Q. Time of the Wyco?

A. Time of the Wyco lost in going to the assistance of the Llama.

Q. She was ordered in after the Llama was stranded?

A. After the Llama was stranded.

Q. And she arrived there too late to be of assistance?

A. Yes, sir.

The Court: What did that amount to?

The Witness: The disbursements or charge made on the Wyco, \$2,872.98.

The Court: Which you paid?

The Witness: It has not been paid in the sense that we have ever received any money; it is a bookkeeping entry made against the Llama.

Q. The Wyco was a steamer owned by the same company?

A. Owned by the Standard Oil Company.

Q. And that, I understand, is a charge against the Llama for the time employed by the Wyco in connection with this service and the expenses of coal, wages, etc., during the deviation in going in there?

A. Yes, sir.

[fol. 150] Q. The second item, "Cable expenses incurred in connection with the sinking of the steamship Llama, \$209.75; is that the amount your company actually paid for cables in connection with the matter?

A. Yes, sir.

Q. Third item, wages and maintenance members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking, \$271.88." Was that amount paid?

A. That was actually paid to the members of the crew of the Llama.

Q. For that period?

A. For that period.

Q. The last item is bill rendered and paid to the British Admiralty for services in connection with the stranding, seventy-three pounds, thirteen, four at \$4.75—\$349.92. Have you got the bill for that?

A. I have, yes, sir.

Q. What does that state about what the charge was for?

A. This is a bill rendered by the Admiralty and reads: "Admiralty claim for expenses arising out of assistance rendered by His Majesty's transport Prudenharn to the steamship Llama while ashore in Westray Firth in November, 1915, value bunker coal expended thirty-five pounds seven and two——"

Mr. Ryan: From what is the witness reading?

The Witness: A bill rendered by the British Admiralty which I am quite willing to offer. The letter was sent to our agents in London and I think I have one in my files here if you want to see it.

Mr. Ryan: That is the original?

The Witness: The original; yes, sir.

Q. Is that the whole of it now?

A. That's the whole account, seventy-three pounds, thirteen and four.

Q. Have you stated the items of all of it, when counsel interrupted you?

A. Coal, overtime of crew of Prudenhams, travelling expense, one coil of rope lost, 2½-inch steel wire hawser lost—total of seventy-three pounds, thirteen, four. I also have the receipt in which the [fol. 151] paymaster general of the Admiralty acknowledges receipt of this money.

Q. It was actually paid by the company?

A. Yes, sir.

Cross-examination by Mr. Ryan:

Q. Did you personally at any time make any arrangement with the British Admiralty that vessels of the Standard Oil bound for Scandinavian ports should touch at Kirkwall going to Scandinavia?

A. Our ships going to Scandinavian ports had received no instructions to call at Kirkwall; each voyage bound to Scandinavia they were intercepted by British men-of-war—

Q. Just answer the question.

The Court: The question is whether you personally made any arrangement.

A. I personally did not; the company made—

Mr. Kirlin: You did not; that answers that.

Q. You don't know of your own knowledge what arrangements were made by your company with the British Admiralty authorities?

A. I do of my own knowledge.

Q. How do you know it?

A. By the correspondence which passed through me.

Q. Have you that correspondence; can you produce it?

A. I can produce it; I haven't it with me.

Mr. Kirlin. It is attached to the proofs of loss.

Q. As a matter of fact, hadn't the Standard Oil Company beginning immediately after February 19, 1915, ordered every one of its vessels to stop at Kirkwall on its way to Scandinavian ports and didn't the Llama, as a matter of fact, in pursuance of such direct instructions, stop at Kirkwall on her previous voyages between February, 1915, and October, 1915?

A. The Llama was instructed to call at Kirkwall by us, but that was in pursuance of an agreement which we had with the British [fol. 152] Government which was not a voluntary agreement in any sense of the word.

Q. Just answer the question. On the voyage of the Llama prior to her voyage beginning on October 14, 1915, on her voyage previous to that one, from New York to Scandinavian ports, wasn't she instructed by the Standard Oil Company before she left New York to stop at Kirkwall?

A. She was not, as far as I recall.

Q. Well, can't you examine your records and ascertain exactly about that?

A. Our records will show, but I am positive that she didn't have instructions on the previous voyage.

Q. Do you remember a cable that was sent on February 19, 1915, to the Foreign Ship Department of the Standard Oil Company at 26 Broadway, New York, from P. S. and Sons at London, stating as follows: Pioneer tendered at Kirkwall yesterday, release today. In future instruct all vessels passing north of Scotland to call voluntarily and report at Kirkwall, otherwise taken there and delayed."

A. I don't recall that identical telegram.

Q. This is a cable.

A. Or cable. It sounds to me—but I can't say positively—

Q. You are in the marine department, are you?

A. I am. It was formerly the foreign shipping department; on December 1, 1920, it was changed to the marine department.

Q. I refresh your recollection, and ask you whether that cable was not received by the foreign shipping department, which is now the marine department, of which you are assistant manager, on or about February 19, 1915?

A. I think that telegram was received.

Q. Well, your previous testimony was in error, then, that Llama had not on her previous voyages been directed by the Standard Oil Company, before she left New York, to stop at Kirkwall?

Objected to.

[fol. 153] Q. On voyages to Scandinavian ports subsequent to February 19, 1915, and prior to October 14, 1915.

The Court: What is the objection?

Mr. Kirlin: The objection is that is a telegram from over there asking them to do it; my friend is assuming that they have done it.

The Court: I understand; I sustain the objection.

Q. As a matter of fact, at some time between January, 1915, and October 14, 1915, the Standard Oil Company entered into an agreement with the British Admiralty whereby all vessels of the Standard Oil Company sailing from New York for Scandinavian ports were to stop at Kirkwall, didn't it?

A. They did.

Q. And it was in pursuance of such an arrangement that the

Llama on her voyage beginning on October 14, 1915, did clear and touch at Kirkwall?

A. Yes, sir.

Q. I show you these papers which purport to be the original clearance papers of Llama on her voyage from New York to Copenhagen, via Kirkwall, beginning on October 14, 1915, also a photostatic copy of them, and ask you whether or not those are the original clearance papers and whether or not that photostatic copy is a true copy of those original clearance papers?

A. I cannot say that without comparing them; this is the original clearance.

Mr. Kirlin: If he identifies the original, I will agree with you about the copy.

Q. This is the original clearance; there is no question about that?

A. No, sir.

Mr. Ryan: Will you have them marked now, so we can identify it?

Q. These are the copies.

Mr. Ryan: Government offers these papers in evidence, as Government Exhibit 4.

[fol. 154] Mr. Kirlin: What are you offering?

Mr. Ryan: Photostatic copy testified by the witness to be a true copy of original clearance papers of Llama from New York on her voyage beginning on October 14, 1915, from New York to Copenhagen via Kirkwall.

Q. I show you libelant's Exhibit No. 9 and ask you whether you are familiar with that bill of sale and the transaction out of which it grew?

A. I am.

Q. Can you state of your own personal knowledge whether the \$50,000 consideration mentioned in that bill of sale was ever actually paid by the Standard Oil Company to the Deutsch Amerikanische Petroleum Gesellschaft?

Mr. Kirlin: I object; that is a document under seal and the consideration is recited as having been received in the paper.

The Court: The transfer is recognized by the Government.

Mr. Kirlin: Yes.

The Court: I sustain the objection.

Q. As a matter of fact, haven't the libelant's commission and/or the British Admiralty notified the Standard Oil Company of New Jersey that they or it regarded all these attempted transfers of title by bill of sale after the outbreak of the war between England and Germany from the Deutsche-Americanische to the Standard Oil Company of New Jersey as ineffective and invalid under their interpretation of international law, so far as transferring the title to these German registered vessels to the American Company is concerned,

and haven't they, as a matter of fact, seized all the other vessels of that German Standard Oil subsidiary and taken over control and operation of them, to the exclusion of the Standard Oil Company of [fol. 155] New Jersey; and don't they now, through their agents exercise such control and exclusive possession of all other vessels of the same class of the Llama of that German corporation?

Objected to.

Objection sustained.

Libelant rests.

ARGUMENT OF COUNSEL

Mr. Ryan: The Government reads in evidence the depositions on behalf of the respondent taken at London, England, at the office of the American Embassy on August 5, 1920, counsel for both parties being present, as follows: Valentine Stuart Cox, David Cunningham, Ernest Edward Knight, Ernest Brown, Walter Midwood Johnson and Valentine Stuart Cox, recalled.

Mr. Kirlin: Those proofs of loss, I submitted, show the shipment of cargo, but my friend made some sort of reservation about them; is there any question intended to be raised that the cargo was actually shipped?

Mr. Ryan: Oh, no.

(Objections overruled in Cox deposition.)

Mr. Kirlin: I don't like to see just a patch of the general orders put in; it seems to me we should have had the whole of the order.

The Court: I will permit it to stand. Have you the remaining orders?

Mr. Ryan: That's all that I have.

The Court: Have you any further testimony?

Mr. Ryan: No; I had intended to have an expert witness today, but he didn't come down from Washington.

The Court: Well, do you rest or not?

[fol. 156] Mr. Ryan: You have rested?

Mr. Kirlin: I have rested.

Mr. Ryan: Yes, I will rest; the master testified to what the expert would testify to.

Adjourned to Wednesday, February 2, 1921, at 10:30 A. M.

Wednesday, February 2, 1921—at 10:30 a. m.

Case continued.

Appearances as before.

Mr. Ryan: The Government has no objection to the remainder of scrap logbook offered in evidence by counsel for libelant other

than the entries on October 3, 1915, the date of the stranding being received by the Court for its consideration, subject, of course, to the consideration that these entries have not been properly proved, but are merely for the Court's information; so far as an entry in the scrap logbook made October 29, 1915, is concerned, the Government consents that that be received in evidence for all and any purpose and at this point I read in evidence that entry on October 29, 1915, reading as follows:

Mr. Kirlin: I want to object to the reading of it.

Mr. Ryan: Will you first permit me to read it?

The Court: You want to make an objection before it is read into the record?

Mr. Kirlin: Yes. Now, I am not at all keen about putting these logbooks in, but I think it is only the part of candor due to the Court to offer them. Now, if they are objected to I don't mind their being ruled out; the substance of them is in the testimony, but I do object to counsel reading a portion of a scrap log when the testimony is that the scrap log is merely a memorandum made during the watch by the officer of the watch, is used as a basis of writing up the ordinary log, which, when written up, is the official log and may contain, not only what the officer has noted down, but what the chief officer who writes up the log may wish to add to it as embodying the full history of that watch; and if we are going to take any of it, we should take it all.

The Court: Yes, that is true.

Mr. Ryan: The Government will withdraw its objection to the entry of the logbooks.

The Court: They are all in; let them all be marked and if you desire to read from any portion of the log in the course of your argument you may do so. It is not necessary to read it into the record, because the whole logs are in.

Argument of counsel.

Recess.

After Recess

Further argument of counsel.

Adjourned to Thursday, February 3, 1921, at 10:30 A. M.

Thursday, February 3, 1921—10:30 a. m.

Case continued.

Appearances as before.

Mr. Kirlin: Mr. Ryan called my attention to the fact yesterday that the item of claim under the sue and labor clause in behalf of the Wyco, and I think the same principle also applies to the

amount that we paid the British Government, were really expenditures made particularly in behalf of cargo, which is not before [fol. 158] us here, so I have had those items averaged, and with the consent of my friend I will put in these little exhibits, the effect of which will be to withdraw the portion of each of those two items which on an average would have been applicable to cargo, and limit the claim for the allowance on the Wyco to \$2,023.84 and the proportion of the bill paid to the British Admiralty to \$246.50.

Received and marked Exhibits L 12 and L 13.

Further argument of counsel.

The Court: I am going to take this case under advisement. I will give each side until February 19 to submit briefs.

[fol. 159] IN UNITED STATES DISTRICT COURT

[Title omitted]

MEMORANDUM OPINION—Filed July 30, 1921

Messrs. Kirlin, Woolsey, Campbell, Hickox & Keating, proctors for libellant (J. Parker Kirlin, Esq., and P. Randolph Harris, Esq., of counsel).

Elmer H. Geran, Esq., United States Attorney, proctor for respondent (James W. Ryan, Esq., Assistant United States Attorney, of counsel).

LYNCH, District Judge:

The libellant's tanker "Llama," bound for Copenhagen with a cargo of oil, was insured by the Treasury Department of the United States (Bureau of War Risk Insurance) as follows: \$115,000 covering the vessel and \$45,000 covering the cargo. The vessel and cargo became a total loss during the voyage and the libellant seeks to recover its losses from the insurer.

The tanker sailed from New York October 14, 1915, intending to stop at the port of Kirkwall, Scotland, before proceeding to Copenhagen. It was possible to visit Kirkwall by either steaming through Fair Island channel, between the Orkney and the Shetland Islands, north of Scotland, and then southward by way of an open sea, or by proceeding through the Westray Firth. The master of the ship [fol. 160] testified that the Fair Island course was the course usually followed by him during the war, but that on one occasion, the previous trip, he was taken into Kirkwall via Westray by a British naval prize crew.

On October 29th the tanker was about 400 miles westward of Kirkwall when she was stopped by the British warship "Virginia." A lieutenant and four men from the "Virginia," all armed, boarded her and examined her papers and documents. These documents showed that she was bound for Copenhagen, a neutral destination,

and that her master was under instructions to visit Kirkwall. The master informed the lieutenant, whose name was Cox, that he intended to proceed to Kirkwall by way of the Fair Island passage. Lieutenant Cox thereupon communicated with the "Virginia" by semaphore, and, as a result of instructions received by the lieutenant from the "Virginia," which were to take the ship into Kirkwall, he, the lieutenant, directed that the vessel proceed to that port through Westray Firth.

The tanker arrived off Westray Firth on the night of October 30th and Lieutenant Cox, who had been instructed not to pass through the islands at night, directed that she remain off the entrance until morning. The following morning (October 31st) the course was fixed by Lieutenant Cox and the vessel began its passage into and through the Firth as directed by the lieutenant. While proceeding along near a point at the outer edge of the Skea Skerries she struck a submerged rock, broke up and became a total loss.

These are the facts as I find them.

There is a conflict as to whether the course through Westray Firth was taken by direction of the British naval officer or was selected by the master of the "Llama." The master and the third officer, Jensen, both testify that it was pointed out to the naval officer that the general passage was through the Fair Island channel, where it was safer, but that the naval officer, pointing out that submarines were [fol. 161] operating "out there" (the open sea beyond the Orkney and Shetland Islands) urged that it was better to get in as quickly as possible, saying, "We will go through the Westray."

The naval officer, who was about 22 years of age at the time of the "seizure," denies that he altered the course of this vessel. Testifying five years afterward, he says that the master informed him when he boarded the "Llama" that it was intended to proceed into Kirkwall via Westray.

My conclusion, however, is that if the "Llama" had not been held up by this cruiser she would have proceeded to the north of the Orkneys and thence down the coast to Kirkwall where, the master testified, "it was just as safe as the Atlantic Ocean," and that the Westray passage was taken at the instigation and continued under the direction of the naval officer.

This conclusion is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to me to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced considerable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young lieutenant at the time the intended course into Kirkwall was discussed by him with the master. The instructions to the British

officer were that he was to take the vessel to Kirkwall and, in view of the fact that the vessel intended to go to that port, these instructions really meant that he was to see that she got there. It was perfectly natural for him to decree that she should proceed via the [fol. 162] shorter route—a route which though more dangerous from a navigation standpoint was practically free of enemy war craft.

There is also a conflict with respect to the activities of the lieutenant while aboard in connection with the navigation of the vessel. The master and the third officer testified that all courses were initiated by the naval lieutenant, while Lieutenant Cox testified that the courses were initiated by the ship's crew—not by him.

The lieutenant admits that either he, or one of his subordinates, was in constant touch with every movement of the vessel; that nothing was done in the way of navigation that he or they did not know about and consent to and that he was on the bridge on the morning that the vessel was being navigated through Westray just previous to her striking the submerged rock. He denies, however, that he actively participated in the setting of the course at any time while he was aboard.

The master and third officer, the latter no longer employed by libelant, both insist that he initiated and actively participated in the setting of all courses and that on the morning of October 31st, previous to the vessel's mishap, all maneuverings of the vessel were under the lieutenant's explicit directions. The weight of the testimony and the probabilities of the situation lead me to the conclusion that the true version is that of the witnesses for the libelant.

Having determined these facts we approach a consideration of the clause of the policies under which the controversy arises. That clause is as follows:

"Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and counter marque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes and peoples, of what nation, condition, or quality whatsoever, and all consequences of hostilities or warlike operations, whether before or after declarations of war."

It is the contention of the respondent that the losses sustained by the libelant were not due to or occasioned by any of the perils insured against as set forth in this clause, but that the proximate cause of the loss was an error in navigation, a marine peril, as distinguished from a war peril.

The respondent, in support of this contention, cites and quotes from a large number of interesting opinions. But I do not find these decisions useful because of the fact that the insurance contract now under consideration is quite different from the policies reviewed in those cases.

The libelant, however, directs attention to a case in which a clause quite similar to that now under consideration was construed by the

Circuit Court of Appeals for the Second Circuit (*Muller v. Globe & Rutgers Fire Ins. Co. of the City of New York*, 246 Fed. 759). The clause there was as follows:

"This insurance covers only the risk of capture, seizure, or destruction or damage by men-of-war, by letters of marque, by takings at sea, arrests, restraints, detainments, and acts of kings, princes, and people, authorized by and in prosecution of hostilities between belligerent nations."

In that case the steamer "Canada," loaded with cotton, intended to take a course northward of both the Orkneys and Shetlands, and thence to Kirkwall, Scotland, there to submit to examination by British authorities; that when within 120 miles of the British coast the vessel was boarded by an armed party consisting of one officer and six men, which party directed the steamer to go to Kirkwall by the passage between the Orkneys and Shetlands, and by night, which the "Canada's" master objected to because the lights between those islands were removed or extinguished. He was compelled to [fol. 164] attempt it, however, after which he and the British naval officer consulted regarding the course, the master testifying that he relied on the alleged superior local knowledge of the British officer. The vessel ran ashore at the foot of a cliff and became a total loss. I quote from the opinion of Circuit Judge Hough:

"That the Canada and her cargo was seized, arrested, and detained within the meaning of the policy we think too plain to require more than mention; the sole query is whether her loss proximately resulted therefrom.

* * * * *

That cause is proximate which sets the other causes in motion; only when causes are independent is the nearest in time looked to. *Insurance Co. v. Boon*, 95 U. S. 117, 24 L. Ed. 395, a case whose facts are instructive and interesting. If there is an unbroken connection between act and injury, the act causes the injury; an intervening act is not the proximate cause of injury, unless it is efficient to break the casual connection (*Milwaukee, etc., R. R. v. Kellogg*, 94 U. S. 469, 24 L. Ed. 256).

* * * * *

The Hilary did not say to the Canada, 'Go to Kirkwall, as you intended; the lights are out, and you must pick your own way,' but compelled her to pursue an imposed and dangerous route, and especially to go by night in charge of a naval officer whose local knowledge was perhaps deficient, and certainly not useful. Not only did a belligerent's necessity create the peril of unlighted seas, but by 'acts of kings authorized in prosecution of hostilities,' the Canada was forced to run risks that even in time of war she could and would have escaped under the uncontradicted evidence. Furthermore, the very purpose of compelling such navigation was to prevent aid and

[fol. 165] comfort reaching enemies of Great Britain; therefore the insured cotton was lost in the continuing process of detaining the ship that carried it, for purposes of search, and seizure, too, if the facts found had warranted it.

Thus we find no intervening cause, breaking the casual connection between the control assumed by the Hilary's boarding party, and the loss of the ship. There was no time when the shipmaster was left to navigate his own ship in his own way; she was lost while he was doing what he had to do. A workman compelled to handle familiar tools with one eye blindfolded and injured by his own blundering use of them, is in truth injured by the person who put compulsion upon him."

In the instant case the master testified that previous to this voyage his vessel had been boarded by boarding or prize crews; that when they came aboard they had full control over the ship and he and the crew obeyed their orders in ever-particular. So what do we find? A superior power backed by authority of force acting upon the master to prevent him from keeping to his plan to proceed through the open waters of the Fair Island Passage—a longer voyage, but clear of the hazardous waters of Westray. This lieutenant was on board as the supreme authority, with armed men to support that authority, and the statement of his decision to proceed through Westray Firth assumed the force of an order. So at the very outset, therefore, a chain of events was stated by this taking at sea, arrest, restraint or detainment in consequence of hostilities, which caused directly the taking of an obviously more dangerous course than the one that would have been followed if the promoting cause had not occurred, and the course of the vessel thereafter was under the constant guidance and control of this active war officer.

As in the Muller case, supra, there was no intervening cause breaking the casual connection between the control assumed by the "Vir-[fol. 166] ginia" boarding party and the loss of the ship. There was no time when the shipmaster was left to navigate his ship in his own way; she was lost while he was doing what he had to do.

The "Llama" was all the time in the grip of the captor and of its armed representatives, whose control never ceased, but efficiently caused the loss. After the seizure the adventure of taking the ship into Kirkwall was that of the British naval authorities, and the risk and responsibility of it was theirs.

My conclusion is that the loss of the "Llama" and cargo proximately resulted from perils covered by the policy and that, therefore, the libellant should have a decree for the full amounts of the loss under both policies, besides interest and costs.

[File endorsement omitted.]

[fol. 167] IN UNITED STATES DISTRICT COURT

[Title omitted]

FINAL DECREE—Filed Sept. 23, 1921

A libel having been duly filed in this court on the 12th day of May, 1919, by Standard Oil Company, a New Jersey corporation, and a resident of the District of New Jersey, against United States of America, the respondent above named, to recover from said respondent the losses sustained by the libelant under two certain certificates or policies of insurance, namely:

Certificate or policy of insurance No. 1263, duly issued by the Bureau of War Risk Insurance of the Treasury Department on or about the 8th day of October, 1915, signed by William G. McAdoo, Secretary of the Treasury, countersigned by J. Brooks B. Parker, Assistant Director of the Bureau of War Risk Insurance, and delivered unto the libelant, upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama, in the sum of one hundred fifteen thousand [fol. 168] dollars (\$115,000) valued at the sum insured, in favor of Standard Oil Company (New Jersey), the libelant above named, and

Certificate or policy of insurance No. 1269, duly issued by the Bureau of War Risk Insurance of the Treasury Department on or about the 16th day of October, 1915, signed by William G. McAdoo, Secretary of the Treasury, countersigned by William C. Delanoy, Director of the Bureau of War Risk Insurance, and delivered unto the libelant, in the sum of forty-five thousand dollars (\$45,000) upon the freight and advances of the vessel called the Llama, in favor of said Standard Oil Company;

And due service of a copy of said libel having been made upon the respondent the United States of America, and said respondent having duly appeared herein by its proctor, the United States Attorney for the District of New Jersey, and the answer of said respondent, United States of America to the libel and complaint of Standard Oil Company having been filed herein, denying any liability in the premises on the part of said respondent, and this cause having duly come on to be heard on the pleadings and proofs adduced by the respective parties, and it having appeared that the losses sustained by said Standard Oil Company on account of the total loss of the steamship Llama, her freight and advances, on or about the 31st day of October, 1915, as well as the expenses and disbursements incurred by said assured, the libelant herein, in suing, laboring and traveling for, in and about the defense, safeguard and recovery of the said steamship Llama, her freight and advances, amounted to one hundred sixty-two thousand four hundred thirty-eight $79/100$ dollars (\$162,438.79), of which proofs of loss were duly made by the libelant, and submitted to said Bureau of War Risk Insurance of the Treasury Department, and that payment thereof had been denied, and this

cause having been duly argued and submitted by the advocates for the respective parties, and due deliberation having been had, and [fol. 169] the Court having found that the said steamship Llama struck a submerged rock in Westray Firth, broke up and became a total loss on the morning of October 31st, 1915, and that the said loss of the steamship Llama, her freight and advances, were caused by and were due to perils insured against by the respondent under said certificates or policies of insurance, namely, valued certificate or policy No. 1263, in the sum of \$115,000 on the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama, owned by and the property of the libelant, and certificate or policy No. 1269, in the sum of \$45,000 upon the freight and advances of said vessel, and the Court having filed its opinion in writing directing that the libelant recover from the respondent the amounts alleged in the libel to be due to the libelant on both causes of action, with interest and costs, and the costs of the libelant having been duly taxed at the sum of \$217.75.

Now, on motion of John M. Woolsey, proctor for the libelant, it is Ordered, adjudged and decreed that the libelant, Standard Oil Company, have, receive and recover of and from the United States of America under the said certificates or policies of insurance the following sums:

1. For total loss of the S. S. Llama, insured by and under said policy or certificate of insurance mentioned and described in the libel herein, that is to say, No. 1263, in the sum of \$115,000 on the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the Llama in favor of the Standard Oil Company (New Jersey) duly signed by William G. McAdoo, Secretary of the Treasury of the United States, and countersigned at Washington, [fol. 170] D. C., the 8th day of October, 1915, by J. Brooks B. Parker, Assistant Director of the Bureau of War Risk Insurance, and delivered to the libelant... \$115,000.00
Interest from October 31, 1915..... 40,671.67
2. For total loss of the freight and advances of the said S. S. Llama insured by and under the said policy or certificate of insurance mentioned and described in the libel herein, that is to say, No. 1269, in the sum of \$45,000.00 upon the freight and advances of said S. S. Llama in favor of the Standard Oil Company (New Jersey), duly signed by William G. McAdoo, Secretary of the Treasury of the United States, and countersigned at Washington, D. C., the 16th day of October, 1915, by William C. Delanoy, Director of the Bureau of War Risk Insurance, and delivered unto the libelant 44,686.82
Interest from October 31, 1915..... 15,804.24
3. Expenses incurred by the libelant in suing, laboring and traveling, for, in and about the defense, safeguard and recovery of the said S. S. Llama, her hull, ma-

chinery, boilers, equipment, stores and everything connected therewith, as well as the freight and advances of the said vessel, recoverable under said policy No. 1263 upon the said S. S. Llama, and under said policy No. 1269 upon the freight and advances of said steamship	2,751.97
Interest from October 31, 1915.....	973.28

Total	\$219,887.98
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[fol. 171] Together with the sum of \$217.75, costs of the libelant as taxed, amounting to the aggregate sum of \$220,105.73, with interest on the said aggregate sum until paid; and it is further

Ordered, adjudged and decreed, that unless this decree be satisfied or an appeal be taken therefrom within the period prescribed by law and the rules and practice of this Court after service of a copy hereof and notice of entry on the respondent, United States of America, or its proctor, the respondent, United States of America, pay to the libelant, or to its proctor, the amount due under this decree as aforesaid.

Charles F. Lynch, U. S. D. J.

[fol. 172] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF SETTLEMENT—Filed September 23, 1921

SIR: Please take notice that the foregoing decree will be presented to the Honorable Charles F. Lynch at the office of the Clerk of this court in the Post Office Building, City of Trenton, on the 23rd day of August, 1921, at 11 o'clock in the forenoon, for settlement and signature.

Dated, New York, August 17, 1921.

Yours, etc., John M. Woolsey, Proctor for Libelant.

To the United States Attorney, District of New Jersey, Proctor for Respondent.

[fol. 173] Settlement of foregoing decree is adjourned by consent to the 26th day of August, 1921, at 3 P. M.

John M. Woolsey, Proctor for Libelant. Elmer H. Geran,
U. S. Attorney.

[File endorsement omitted.]

[fol. 174] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed February 23, 1922

SIRS: Please take notice, that the respondent, United States of America, hereby appeals to the United States Circuit Court of Appeals for the Third Circuit from the final decree entered herein on the 23rd day of September, 1921.

Dated, February 20th, 1922.

Yours, &c., Walter G. Winne, United States Attorney for the District of New Jersey, by Frederic M. P. Pearse, Assistant United States Attorney.

[fol. 175] To Kirlin, Woolsey, Campbell, Hickox & Keating, Esqs., Proctors for Libelant, and George T. Cranmer, Esq., Clerk U. S. District Court, District of New Jersey.

[File endorsement omitted.]

[fol. 176] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR AND ORDER ALLOWING APPEAL—Filed February 23, 1922

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The petition of United States of America, respondent herein, respectfully shows:

First. That on or about the 12th day of May, 1919, Standard Oil Company of New Jersey filed its libel in the United States District Court for the District of New Jersey against United States of America to recover from the United States of America, respondent herein, losses alleged to have been sustained by the libelant under two certain certificates or policies of insurance, to wit:

Certificate or policy of insurance No. 1263 issued by the Bureau of War Risk insurance of the Treasury of the United States of America on or about the 8th day of October, 1915, upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in the good vessel called the "Llama" in the sum of one hundred fifteen thousand dollars (\$115,000) valued at the sum insured in favor of the libelant above named; and

Certificate or policy of insurance No. 1269 issued as aforesaid in the sum of \$45,000 upon the freight and advances of the vessel likewise in favor of the libelant.

[fol. 177] Second. That said libel was filed for the purpose of recovering from the respondent losses alleged to have been sustained by the libelant on account of the total loss of the said steamship "Llama," her freight and advances on or about the 31st of October, 1915, as well as expenses and disbursements incurred by libelant in suing, laboring and traveling for, in and about the defense, safeguard and recovery of said vessel, her freight and advances.

Third. That such proceedings were thereafter had so that testimony was taken out of court and before the Court and argument was had before Honorable Charles F. Lynch, District Judge for the District of New Jersey, at the Post Office Building, in the City of Newark, and thereafter a decision was rendered by said Judge and a decree entered wherein and whereby it was ordered, adjudged and decreed that there be paid by the respondent to the libelant under the certificates or policies of insurance the following sums:

For total loss of S. S. "Llama" undr certificate No. 1263, the sum of	\$115,000.00
with interest from October 31, 1915	40,671.67
For total loss of the freight and advances of said vessel under certificate No. 1269	44,686.82
Interest from October 31, 1915.....	15,804.24
Expenses incurred by libelant in suing, laboring and traveling for and in and about the defense, safeguard and recovery of the said vessel, under policy or certificate No. 1263 and No. 1269.....	2,751.97
Interest from October 31, 1915	973.28
Total	\$219,887.98

[fol. 178] Together with the sum of \$217.75 costs of the libelant as taxed, amounting to the aggregate sum of \$220,105.73, with interest until paid.

Fourth. Libelant is advised and insists that said final decree and said decision whereon it was rendered are erroneous in that said decree did not decree and that said decision did not adjudge that the libel filed by the libelant herein should be dismissed with costs and that said decree and decision are erroneous in that it was decided and decreed that respondent became liable for alleged losses sustained by the libelant under the policies or certificates of insurance aforesaid when said decree and decision should have adjudged and decreed that the respondent was not liable under the certificate or policies of insurance aforesaid and should have dismissed the libel filed on behalf of the libelant with costs.

Fifth. For this and manifold other reasons fully and at large set forth and appearing in its assignments of error filed herewith, re-

spondent, United States of America, appeals from said decree to the Circuit Court of Appeals for the Third Circuit and on said appeal intends to seek a new decision on the law and on the facts and on the pleadings and proofs in said District Court and prays that its appeal herein may be allowed and that the record and proceedings herein may be returned by the United States Circuit Court of Appeals for the Third Circuit and that said final decree may be reversed by said Court and that said libel filed by the libelant herein may be dismissed and that said respondent may have such other and further relief as to the Court may seem just.

Dated February 20, 1922.

Yours, &c., Walter G. Winne, United States Attorney, by
Frederic M. P. Pearse, Assistant United States Attorney,
Proctors for Respondent.

[fol. 179] It is ordered that the appeal herein be allowed as prayed for.

Charles F. Lynch.

Dated February 20th, 1922.

Jurat showing the foregoing was duly sworn to by M. P. Pearse omitted in printing.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED ASSIGNMENTS OF ERROR

Now comes the respondent, United States of America, by Walter G. Winne, United States Attorney for the District of New Jersey, and Frederic M. P. Pearse, Assistant United States Attorney, and J. Frank Staley, Special Assistant to the Attorney General, proctors for the United States, and say, that in the record and proceedings herein there are manifest errors, to wit:

1. In that the Court erred in finding that the losses sustained by the libelant were due to and occasioned by the perils insured against in the policies of insurance upon which the action was founded.

2. In that the Court erred in finding as a fact:

The master informed the lieutenant, whose name was Cox, that he intended to proceed to Kirkwall by way of the Fair Island passage. Lieutenant Cox thereupon communicated with the "Virginia" by sennaphore, and, as a result of instructions received by the lieutenant from the "Virginia," which were to take the ship into Kirkwall,

he, the lieutenant, directed that the vessel proceed to that port through Westray Firth.

[fol. 181] 3. In that the Court erred in finding as a fact:

The tanker arrived off Westray Firth on the night of October 30th and Lieutenant Cox, who had been instructed not to pass through the islands at night, directed that she remain off the entrance until morning. The following morning (October 31st) the course was fixed by Lieutenant Cox and the vessel began its passage into and through the Firth as directed by the lieutenant. While proceeding along near a point at the outer edge of the Skea Skerries she struck a submerged rock, broke up and became a total loss.

4. In that the Court erred in finding:

My conclusion, however, is that if the "Llama" had not been held up by this cruiser she would have proceeded to the north of the Orkneys and thence down the coast to Kirkwell where, the master testified, "it was just as safe as the Atlantic Ocean," and that the Westray passage was taken at the instigation and continued under the direction of the naval officer.

5. In that the Court erred in finding:

This conclusion is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced considerable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young [fol. 182] lieutenant at the time the intended course into Kirkwall was discussed by him with the master. The instructions to the British officer were that he was to take the vessel to Kirkwall and, in view of the fact that the vessel intended to go to that port, these instructions really meant that he was to see that she got there. It was perfectly natural for him to decree that she would proceed via the shorter route—a route which though more dangerous from a navigation standpoint was practically free of enemy war craft.

6. In that the Court erred in finding:

There is also a conflict with respect to the activities of the lieutenant while aboard in connection with the navigation of the vessel. The master and the third officer testified that all courses were initiated by the naval lieutenant, while Lieutenant Cox testified that the courses were initiated by the ship's crew—not by him.

The lieutenant admits that either he, or one of his subordinates, was in constant touch with every movement of the vessel; that nothing was done in the way of navigation that he or they did not know about and consent to and that he was on the bridge on the morning that the vessel was being navigated through Westray just previous to her striking the submerged rock. He denies, however, that he actively participated in the setting of the course at any time while he was aboard.

7. In that the Court erred in finding:

The master and third officer, the latter no longer employed by libelant, both insist that he initiated and actively participated in the setting of all courses and that on the morning of October 31st, previous to the vessel's mishap, all maneuverings of the vessel were under the lieutenant's explicit directions. The weight of the testimony [fol. 183] and the probabilities of the situation lead me to the conclusion that the true version is that of the witnesses for the libelant.

8. In that the Court erred in holding that:

In the instant case the master testified that previous to this voyage his vessel had been boarded by boarding or prize crews; that when they came aboard they had full control over the ship and he and the crew obeyed their orders in every particular. So what do we find? A superior power backed by authority of force acting upon the master to prevent him from keeping to his plan to proceed through the open waters of the Fair Island passage—a longer voyage but clear of the hazardous waters of Westray. This lieutenant was on board as the supreme authority, with armed men to support that authority, and the statement of his decision to proceed through Westray Firth assumed the force of an order. So at the very outset, therefore, a chain of events was started by this taking at sea, arrest, restraint or detainment in consequence of hostilities, which caused directly the taking of an obviously more dangerous course than the one that would have been followed if the promoting cause had not occurred, and the course of the vessel thereafter was under the constant guidance and control of this active war officer.

9. In that the Court erred in holding that:

As in the Muller case, *supra*, there was no intervening cause breaking the causal connection between the control assumed by the "Virginia" boarding party and the loss of the ship. There was no time when the ship master was left to navigate his ship in his own way; she was lost while he was doing what he had to do.

[fol. 184] 10. In that the Court erred in holding that:

The "Llama" was all the time in the grip of the captor and of its armed representatives, whose control never ceased, but efficiently

caused the loss. After the seizure the adventure of taking the ship into Kirkwall was that of the British naval authorities, and the risk and responsibility of it was theirs.

11. In that the Court erred in holding that the loss of the "Llama:"

My conclusion is that the loss of the "Llama" and cargo proximately resulted from perils covered by the policy and that, therefore, the libellant should have a decree for the full amounts of the loss under both policies, besides interest and costs.

12. In that the Court erred in failing to find that the proximate cause of the loss of the "Llama" was a marine peril.

13. In that the Court erred in failing to find that the proximate cause of the stranding and subsequent loss of the "Llama" was a sea peril—stranding or shipwreck of the "Llama" in clear daylight upon submerged rocks.

14. In that the Court erred in failing to find that the course upon which the "Llama" was proceeding at the time of her loss had been selected by her master.

15. In that the Court erred in failing to find that the lieutenant of the British navy did not know the Westray Firth, and did not direct the master to take a course through such passage, but to the contrary, the master of the "Llama" had been through the Westray Firth, desired to proceed through such passage, to which the lieutenant made no objection.

16. In that the Court erred in failing to find that the master of the "Llama" charted the course through the Westray Firth [fol. 185] upon which the "Llama" was proceeding and that directions respecting the navigation of such course were given by the master and officers of the "Llama."

17. In that the Court erred in failing to adopt as a controlling factor that the reports of the master of the "Llama," immediately after the stranding, assigned as the reason therefor striking uncharted rocks in the Skea Skerries.

18. In that the Court erred in failing to find that at and prior to the time of the stranding the "Llama" was navigated under the direction of her own officers, who took the observations, charted the courses and directed the sailing courses.

19. In that the Court erred in entering a final decree sustaining libel.

20. In that the Court erred in failing to enter a final decree dismissing the libel.

21. In that the Court erred, in its assessment of damages in allowing interest from the date of the loss.

22. In that the Court erred in not finding that as a libel was filed May 12, 1919, almost four years after the disaster, interest upon the loss must be denied.

23. In that the Court erred in allowing as part of its decree interest in any amount.

24. In that the Court erred in allowing, as part of its decree, an allowance for expenses incurred in suing, laboring, and traveling for, in and about the defense, etc., of the S. S. "Llama" and her freight.

Walter G. Winne, United States Attorney. Frederic M. P. Pearse, Assistant United States Attorney. J. Frank Staley, Special Assistant to the Attorney General in Admiralty.

[fol. 186] CITATION—In usual form, showing service on Kirlin, Woolsey et al.; omitted in printing

[fol. 187] IN UNITED STATES DISTRICT COURT

[Title omitted]

LIBELANT'S EXHIBIT 2—Filed July 30, 1921

Steamship Log Book, in Civil Time, of the Steamship Llama, Voy. No. 6, Tho. E. Clinch, Master

[File endorsement omitted.]

(Here follows reproduction of log book, marked side folio pages 188-208, inc.)

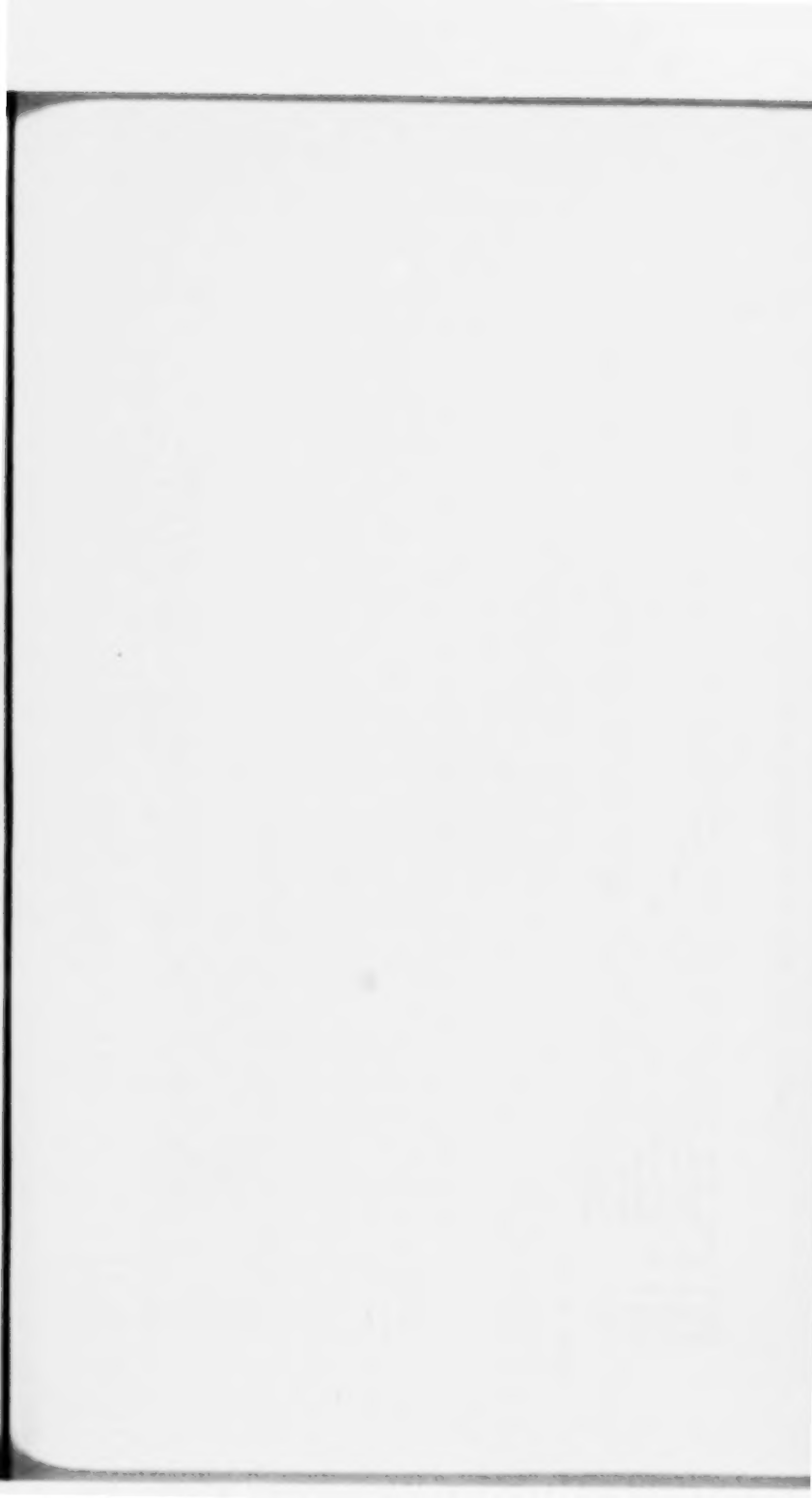


Exhibit L. 2.

Journal from New York towards Copenhagen

Remarks—10th day of Oct. 1915, Sunday
 This day began partly cloudy with fresh NW breeze. Barometer reading 30.03.
 11.00 A. M. Tugboats Dalzelline, W. F. Dalzell and Fred B. Dalzell came alongside.
 11.05 " " Left Van Brunt St. Blyn., ass. by tug-boats.
 12.30 P. M. Arrived at Pier #6, Constable Hook.
 12.40 " " Tug-boats left. Ship made fast.
 2.00 " " Started to pump out ballast from #4 tank and finished pumping at 7.15.
 6.00 " " Night watchman came on board. This day ended with moderate Westerly breeze. Barometer reading 30.15.

Officer on Watch

A. Ricca, 1st Officer
 J. W. Fleming, 2nd " "
 C. Jensen, 3rd " "

Men on Look Out

Alex Shold Boatswain
 J. Aarre Sailor
 J. Christofersen " "
 Arold " "
 A. Limberg " "
 J. Fernandez " "
 C. M. Nielsen " "
 Master

A. RICCA, Chief Officer.

Journal from New York towards Copenhagen

Remarks—11th day of Oct. 1915, Monday
 This day began fine and clear with light Westerly breeze. Bar. reading 30.25.
 Crew employed taking on board ship's stores and general ship's duty.
 9.20 A. M. Started to load oil in all tanks.
 9.30 " " Started to take in coal and water.
 5.00 P. M. Crew left off work for the day.
 6.00 " " Night watchman came on duty, all lights attended to and 1st officer on night duty.
 This day ended with light Westerly breeze, weath 3r fine and clear. Bar. reading 30.27.

A. RICCA, Chief Officer.

Exhibit L. 2.

Journal from New York towards Copenhagen

Remarks—12th day of Oct. 1915, Tuesday.

Day began with light Westerly breeze, weather fine and clear. Bar. reading 30.30.
 5.00 A. M. Finished loading oil. Crew employed taking on ship's stores and general ship's duty.

10.00 " " Tugboat S. T. #15 & 17 came alongside.

10.05 " " Left Oil Dock ass. by tugboats.

10.55 " " Anchored off Thompkinsville with coal barge alongside.

11.00 " " Resumed coaling ship.

1.00 P. M. Crew employed getting ship ready for sea.

6.15 P. M. Finished coaling ship.

Draught—Forward 25.6; Aft 26.11.

At sundown anchor lights attended to and regular anchor watches kept through the night.

Master

A. RICCA, Chief Officer.

Journal from New York towards Copenhagen Via Kirkwall

Remarks—13th day of Oct. 1915, Wednesday.

This day began calm and foggy. Bar reading 30.10.

7.00 A. M. Crew employed getting ship ready for sea and general ship's duty.

2.30 P. M. Pilot came on board and shifted anchor barge. Ship delayed sailing on account of further repairs in Engineer's Dept. At sundown anchor lights attended to and sea watches kept through the night.

11.45 " " Stand by Eng. telegraph.

11.50 " " Started to heave up anchor.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Limberg	12	4	2	
A. Ricca	4	8	Harold	4	8		
C. Jensen	8	12	C. M. Nielsen	8	12		
J. W. Fleming	12	4	J. Fernandez	12	4		
A. Ricca	4	8	Christofersen	4	8		
C. Jensen	8	12	J. Aarre	8	12		
A. RICCA, Chief Officer.				Master			Coal on Hand Leaving New York 684 tons

Exhibit L. 2.

Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	17th day of Oct. 1915 Sunday	Remarks
A.M.	1										
	2										
	3										
	4	506	25 N 87° E	NNW	4		53	30.09			Overcast & cloudy, mod N NW breeze, long NE'ly swell.
	5										
	6										
	7										
	8	533	27 N 87° E	NNW	4		55	30.05			Overcast & cloudy to fine & clear, moderate N NW breeze & moderate sea.
	9										9.38 Engine stopped
	10										9.58 Engine full speed ahead.
	11										Fine & clear, mod. N NW breeze & sea.
	12	552	19 N 87° E	WNW	4		61	30.00			
											Running time 23h 46m. A. S. S.4.
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.											
			Log 101.1								
Noon	N 70° E	143	199								W 60° 06
1											
2											
3											
4	586	34 N 87° E		WNW	5		60	29.88			Mod to fresh WNW breeze, fine & clear & rough beam sea.
5											
6											
7											
8	620	34 N 87° E		WNW	5		58	29.80			Fine & clear, fresh WNW breeze & rough running sea. Vessel shipping seas occasionally.
9											
10											Fine & clear, fresh to strong N NW wind, rough beam sea. Vessel shipping water for & aft.
11											
P.M.	12	652	33 N 87° E	NNW	6		55	29.96			
Officer on Watch											
			From	To	Men on	Look Out	From	To	Lights Exhibited	Coal Consumed	
									Running	Anchor	
J. W. Fleming	12	4		A. Limberg	12		4	4	5		
A. Ricca	4	8		Harold	4		8	8	5		26 tons
C. Jensen	8	12		G. M. Nielsen	8		12	12	0		
J. W. Fleming	12	4		F. Fernandez	12		4	4	0		Coal on Hand
A. Ricca	4	8		J. Christoffersen	4		8	8	5		
C. Jensen	8	12		J. Aarre	8		12	12	5		594 tons
				Master.							
				A. Ricca, Chief Officer.							

Exhibit L. 2.

Journal from New York towards Copenhagen Via Kirkwall

[illegible]

Var.	Course	Dist.by Log	Dist.by Obs.	Dif. of Lat.	Departure	Lat.by D.R.	Lat.by Obs.	Dif. of Long.	Long.by D. R.	Long. by Obs.
Noon	N 88° E	194	204			N 44° 01'	N 55° 46'		W 55° 46'	

1									
2									
3									
4	779	33	E ½ N N 66° E	North	4	52	30.23	3.30 c/e S. C. E ½ N. Mod north- erly breeze & heavy swell, clear with passing clouds.	
5									
6									
7									
8	811	32	N 66° E	North	3	51	30.27	6.40 c/e S. C. N 66° E. Weather remains the same as in the preced- ing watch.	

9						
10						
11						
P.M. 12	843	32	N 66° E	NW	3	52
						30.30
						Clear with passing clouds. Gentle NW'ly breeze & heavy beam swell.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Aarre	12	4	5	
A. Ricca	4	8	J. Christofersen	4	8	5	26 tons
C. Jensen	8	12	J. Fernandez	8	12	0	
J. W. Fleming	12	4	C. M. Nielsen	12	4	0	Coal on Hand
A. Ricca	4	8	Harold	4	8	5	
C. Jensen	8	12	A. Limberg	8	12	5	568 tons
			Master.				
A. RICCA, Chief Officer.							

1							
2							
3							
4	974	34	N 66° E	W	5	54	30.26
5							
6							
7							
8	1006	32	N 75° E	NW	5	53	30.30
9							
10							
11							
12	1039	33	N 75° E	WNW	5	54	30.24
P.M.							

[illegible]

Exhibit L. 2.

Journal from New York towards Copenhagen Via Kirkwall

H	K	Yanths	Courses	Winds	Force	Currents	Thermometer Air	Water	Barometer	Deviation Compass	23rd day Oct.	Remarks of Oct. Saturday
A. M.	1											
	2											
	3											
	4	1631	31	N 82° E	SSW	4	48		29.68			Moderate SSW breeze & light local rain, mod N'ly swell. Overcast & cloudy.
	5											
	6											
	7											
	8	1663	32	N 82° E	SSW	5	46		29.64			Overcast & rain throughout the watch, mod to fresh SSW breeze & mod NW'ly swell.
	9											
	10			N 84° E								
	11											
	12	1692	29	N 84° E	South	5	49		29.60			9.30 e/e S. C. N 84° E. Fresh var. southerly breeze & mod NW'ly swell.
						Running time 23h 44m.	A. S. 8.	knots.				
V. Course Dist. by Log Dist. by Obs. Diff. e/ Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs. W 37° 11'												
N 52° E 185 189 N 53° 57'												
1												
2												
3												
4	1725	33		South	4		50		29.61			Mod southerly breeze, overcast & misty & mod N'ly swell.
5												
6												
7												
8	1758	33		Variable	2		52		29.64			5.30 e/e S. C. N 87° E Overcast & misty to fine & clear, light var SSW'ly breeze & mod sea.
9												
10												
11												
P. M.	12	1792	34	SSW	2		51		29.62			Light SSW breeze, clear to partly cloudy, moderate SW'ly broken sea.

Officer on Watch	From	To	Men on	Look Out	From	To	Lights Exhibited	Coal Consumed
J. W. Fleming	12	4	A. Limberg		12	4	5	
A. Ricca	4	8	A. Arold		4	8	5	
C. Jensen	8	12	J. Fernandez		8	12	0	25 tons
J. W. Fleming	12	4	J. Aarre		12	4	0	
A. Ricca	4	8	Christofersen		4	8	5	Coal on hand
C. Jensen	8	12	C. M. Nielsen		8	12	5	438
A. RICCA, Chief Officer.			Master.					

Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses	Winds	Force	Current	Thermometer Air Water	Barometer	Deviation Compass	26th day of Oct. 1915 Tuesday	Remarks
A. M. 1											
2											
3											
4	2202	32	Ex S $\frac{1}{2}$ S	NW	4		54	30.13			Mod NW breeze, heavy southerly swell, clear with passing clouds.
5											
6											
7											
8	2234	32	Ex S $\frac{1}{2}$ S	NW	3		54	30.17			Weather remains the same as in the preceding watch.
9											
10											
11											
12	2264	30	Ex S $\frac{1}{2}$ S	NW	3		55	30.17			Gentle NW'ly breeze, cloudy & overcast, mod Southerly swell.
Running time 23h 34m. A. S. 8.9 knots.											
Var. Course Dist. by Log Dist. D. R. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs. W 21° 39'											
Noon N 77° E 180 211 N 84° 18'											
1											
2											
3											
4	2296	32	Ex S $\frac{1}{2}$ S	NNE	4		53	30.12			Mod NW to NNE breeze, cloudy & overcast, moderate Southerly swell
5											
6											
7											
8	2328	32	Ex S $\frac{1}{2}$ S	NNE	4		52	30.02			Overcast, mod NNE breeze & mod NE'ly sea.
9											
10											
11											
P. M. 12	2361	33	Ex S $\frac{1}{2}$ S	Variable	4		53	29.82			Overcast, light local rain, moderate var. NE to SE breeze & moderate sea.
Officer on Watch											
J. W. Fleming		12		4	C. M. Nielsen		12	4	5		
A. Ricca		4		8	Christofersen		4	8	5		
C. Jensen		3		12	J. Aarre		8	12	0		
J. W. Fleming		12		4	Fernandez		12	4	0		Coal on Hand
A. Ricca		4		8	Harold		4	8	5		
C. Jensen		8		12	A. Limberg		8	12	5		
A. RICCA, Chief Officer.											
Master.											

Exhibit L. 2.

H	K	Tenths	Courses	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	Remarks 27th day of Oct. 1916 Wednesday
A.M. 1										
2										
3										
4	2395	34	Ex S $\frac{1}{2}$ S	SE	6	54		29.60		Fresh to strong NE breeze, rough sea, weather overcast & hazy.
5										
6										
7										
8	2428	34	Ex S $\frac{1}{2}$ S	SE	6	53		29.42		Overcast, heavy rain, strong SE'ly wind & rough sea.
9										
10										
11										
12	2461	33	Ex S $\frac{1}{2}$ S	SE	7	53		29.25		Strong to moderate SE gale. Vessel laboring heavily taking water fore and aft.
						Running time 23h 37m.		A. S. 8. knots.		

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long by D. R. Long by Obs.
Noon N 80° E 189 189 189 55° 50' 18° 49'

1								29.20	12.38 c/e Steering Comp. ENE.
2								29.12	2.30 Eng aft speed, hove ship to wind
3								29.08	3.35 Strong SE gale & heavy seas.
4	2469	8	S $\frac{1}{2}$ E	S x E	9	54		29.02	Overcast & heavy rain squalls.
5								28.96	7.10 c/e S x E
6								28.91	Weather remains the same as in
7								28.84	the preceding watch.
8	2469	0	S x E	SSE	9	54		28.80	9.00 P. M. weather slightly moder-
9								28.75	ating, heavy seas running.
10								28.68	10.30 Eng full speed ahead, & c/e
11								28.66	Stand. Comp. S 68° E.
P.M. 12	2477	8	SE $\frac{1}{2}$ E	South	7	54		28.66	Steering Comp. SE $\frac{1}{4}$ E.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	A. Limberg	12	4	5	
A. Ricca	4	8	Harold	4	8	5	26 tons
C. Jensen	8	12	Fernandez	8	12	0	
J. W. Fleming	12	4	J. Aarre	12	4	0	Coal on Hand
A. Ricca	4	8	Christofersen	4	8	5	
C. Jensen	8	12	C. M. Nielsen	8	12	5	334 tons
A. RICCA, Chief Officer.			Master.				

Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Course	Winds	Force	Currents	Thermometer Air Water	Barometer	Deviation Compass	31st day of Oct. 1915 Sunday	Remarks
A. M.	1	No log out	S 56° E						1.00 c/e S. C. S 56° E		Steering
	2		"						Comp. SE ¼ S.		
	3		"						Fresh breeze, clear with passing clouds & moderate sea.		
	4		"	South	5		52	29.72	6.00 Eng. all speed ahead.		
	5		S 44° E						6.30 Stopped Eng.		
	6								6.40 c/e S. C. S 44° E.		Eng. full
	7		Various	South	4		50	29.73	speed ahead.		
	8		S 85° E						6.50 Noup Head S SW.		
	9										

9.07 Struck a reef in Westray Firth. Engine reversed full speed astern. Ordered all hands to clear away the boats. Sounded at midships and found 5 fathoms water. Forward 2½ fathoms. Aft 5¼ fathoms. 10.05 A. M. Started to pump out #1 tank by captain's orders. 10.10 British torpedo boat came out for assistance. 10.55 Torpedo boat took hauser. 11.00 A. M. Eng. full astern and torpedo boat pulling. 11.10 hauser parted. 11.15 British torpedo boat came out and put wire hauser on board. 11.24 Engine full astern. 11.26 wire parted and fouled propeller. Stopped engine immediately. 12.25 Tug Plover came alongside. 12.45 Tug took line and attempted to pull ship off, paring three (3) lines, meantime ship filling fast forward port tank, forward hold, and depth tank and vessel pounding very heavy on rocks. 1.30 Electric fuse took fire in forward tween-deck and Captain gave order to lower boats in water and all hands ready to abandon ship. 3.30 Ship fast on the rocks pounding heavily and listing to port side. 4.00 Captain gave orders to abandon ship and all hands in boats, except Captain, Chief Officer, Chief Eng., 2nd Asst. Eng., 1st Asst. Eng., Wireless and one sailor. 4.10 Bt. Captain orders boats and crew with Chief Officer in charge pulled alongside of Tug Plover and proceeded to Kirkwall. 5.00 P. M. Ship being in danger, Captain, second mate, Chief Eng., 1st Asst. Eng., Wireless operator and Seaman Christoffersen left ship and went on board Petrol boats "Evening Star" and stood by all night.

Ship stranded in Westray Firth.

9.00 A. M. ship crew standing by on the Petrol Boat "Evening Star" returned to ship. 9.30 A. M. British trawlers Britanic and Daisy came alongside and with Tug Gloria astern made attempt to pull ship off the rocks. All hands came back on board the ship at 2.30 A. M. 10.00 A. M. Captain gave order to open all valves to let oil run down to sea level. 3.00 P. M. Tug Plover took line. 3.05 Line parted. 3.40 Tug Plover put towing hauser on Llama stern. 3.50 hauser parted. 3.40 Oil leaking into fire room, having fire in donkey boiler ship was in great danger. 2nd Asst. Eng. managed to pull fire out, extinguishing same before leaving ship. 5.00 P. M. All hands left ship, except Chief Officer, standing by on the Petrol boat "Evening Star".

Weather clear with passing clouds, fresh variable SE to NW breeze. All Llama's crew except Chief Officer, Chief Eng., 1st and 2nd Asst. Eng., 2nd Mate and Wireless operator were paid off and in charge of American Consul.

Remarks—1st day of Nov. 1915, Monday.

Exhibit L. 2.

Remarks—2nd day of Nov. 1915. Tuesday.

Day began with fresh NW breeze.
Weather fine and clear.

Ship still in same position. Water inside rising and filling with the tide.

At 12:00 A. M. British Naval Commander came on Board Llama to have a survey, took sounding all around ship and declared no possible chance of getting Llama off the rocks, and so all attempt of getting "Llama" off the rocks where left off.

Remarks—3rd day of Nov., 1915. Wednesday.

Ship still in same position, no other attempt where made to get Llama off the Rocks. Commander Necker-son gave Captain Clinch orders to send the remain of the Llama's crew, except En & Mate, to the United States.



Exhibit L. 3.

Journal from Stockholm towards Copenhagen

H		Courses		Steering		Winds		Thermometer		Barometer		Deviation		Remarks	
K		Tenths		Standard				Air		Water		Compass		13th day of Aug. 1915	
A. M. 1															
2															

This day began fine & clear with gentle NE breeze. Crew employed in general ship work & pumping ship for sea from 7 A. M. to 12 A. M.

Var.	Course	Dist.by	Log	Dist.by	Obs.	Diff. of	Lat.	Departure	Lat	by D.R.	Lat.	by Obs.	Diff. of	Long.	Long.	by D. R.	Long.	by Obs.
N000																		

[illegible]

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
F. L. Sears	8	12	Byonness	8	12	5	Coal on Hand
J. W. Fleming	12	4		12	4	5	
A. Ricca	4	8		4	8	0	
A. Ricca, Chief Officer.							

Exhibit L. 3.

Voyage #5. Journal from Stockholm towards Copenhagen

M	K	Tenths	Courses Standard	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	16th day of August, 1915	Remarks
A. M. 1			W ½ S	W ¼ S				12.00	Midnight	Hammer Pt. Stab
2								3m. off.		
3								2.30 c/e	Stand Comp. W ½ N.	
4	313	40	W ¼ N	W x N	E NE	62	29.83	Mod. breeze, smooth sea, partly cloudy.		
5			Various	"	"			7.25	Hauled in log. reading 348.	
6			"	"	"				Clear with passing clouds, mod. to fresh East breeze & mod. sea.	
7			"	"	"				8.12 Ordered stopped by German Torpedo Boat. 8.18 Allowed to proceed.	
8	—	—			East	60	29.80		8.59 Passed Drogden L. V. 10.53 Stand by engines. 11.02 Stop for Pilot.	
9									11.10 Pilot for mines boarded ship & full speed ahead.	
10									Running time 23h. 51m. A. S. 10.12.	
11										
12										

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure La. by D.R. Lat. by Obs. D. R. of Long. Long. by D. R. Long. by Obs.

243

12.09 Noon Passed in by Breakwater. 12.14 Stopped engines.
 12.24 Ledges to Coal Dock fore & aft.
 12.26 Running off engines Ship fast fore & aft to Dock.

Draft For. 11.00 ft.
 " Aft 19.00 ft.
 1.35 P. M. Commenced coaling ship.
 10.00 P. M. Finished coaling.

Draft Forward 14 ft. Aft 22 ft. 2 in.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running, Anchor	Coal Consumed
J. W. Fleming	12	4	Byonness	12	8	5	27 tons
A. Ricca	4	8		4	8		
	8	12		8	12		
	12	4		12	4		Coal on Hand
	4	8		4	8		
	8	12		8	12		46 tons

A. Ricca, Chief Officer

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H	K	Course Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 19th day of August, 1918
A. M. 1								
2								
3								
4								
5								
6								
7								
8								
9.15								
9.22								
10								
11								
12								
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. D. R. of Long. Long. by D. R. Long. by Obs.								
Noon N 67° W 192° 59' 02"								
1								
2								
3								
4								
5								
6.10								
7								
8								
9								
10								
11.30								
P. M. 12								
Officer on Watch								
J. W. Fleming								
A. Ricca								
F. L. Sears								
J. W. Fleming								
A. Ricca								
F. L. Sears								

Exhibit I. 3.

Voyage #5. Journal from Copenhagen towards New York.

Midnight s/o 24.75 W Standard.

H	K	Course Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	21st day of August, 1915	Remarks
A. M. 1		N 75° W							12.35 Naval officer came aboard.	
2									1.15 Officer left ship. Ship waiting	
3									for signal from cruiser. 2.10 Slow	
4		N 75° W	W x N $\frac{1}{2}$ N	NW	4	56	30.04		ahead. 2.39 Full speed ahead.	
5									Mod. breeze, gentle NW swell,	
6									overcast, rain at times.	
7									Overcast & cloudy, mod. NW	
8		N 75° W	W NW	NW	4	58	30.05		breeze & mod. sea, local rain squalls.	
9									9 A. M. Retarded clocks 23 min.	
10									Fresh breeze. Mod. sea. Overcast.	
11		N 75° W	NW x W $\frac{1}{2}$ W	West	5	59	30.02		Light rain at times.	
12			Running time 23h. 12m.				A. S. 8.4.			

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.

Noon S 86° W 184 59° 23' 13° 55'

1										
2										
3										
4.30		N 75° W	NW x W $\frac{1}{2}$ W	N NW	5	58	29.98		Fresh breeze, mod. sea, overcast,	
5									rain.	
6										
7										
8		N 80° W	W NW	West	5	58	29.95		4.30 c/c S. C. N 80° W. Steering	
9									Comp. W NW. Overcast & cloudy.	
10									Fresh West breeze and mod. sea.	
11									Fresh breeze, mod. sea. Cloudy	
12		N 80° W	W NW	WNW	5	57	29.95		to partly clear.	

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Alvarez	12	4	5	
A. Ricca	4	8		4	8	5	28 tons
F. L. Sears	8	12		8	12	0	Coal on Hand
J. W. Fleming	12	4		12	4	0	
A. Ricca	4	8		4	8	5	
F. L. Sears	8	12	Byonesse	8	12	5	492 tons

Voyage #5. Journal from Copenhagen towards New York

[illegible]

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths Standard	Courses	Steering	Winds Force	Air Water Thermometer	Barometer	Deviation Compass	23rd day of August, 1916	Remarks
A. M.	1									
2										
3			N 82° W	West ½ N	West'y 3 58		29.87			Light breeze, heavy NW swell,
4										overcast.
5										
6										
7										
8			N 82° W N 78° W	West'ly N WNW	West'y 4 58		29.85			Similar weather as in the preceding watch.
B/c	9.18									
10										9 A. M. Retarded clocks 21 min.
11										Fresh breeze. Rough sea. Clear weather.
12			N 78° W	WNW	West 5 59		29.88			
				Running time 24h. 20m.			A. S. 7.1.			
<hr/>										
Var. Course Dist.by Log			Dist.by Obs.		Dir. of Lat. Departure La't by D.R.		Lat.by Obs.		Long by D. R. Long by Obs.	
Noon S 87½ E			175				N 51° 26'		W 23° 39'	

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Byonness	12	4	5	
A. Ricca	4	8		4	8	5	29 tons
P. L. Sears	8	12		8	12	0	
J. W. Fleming	12	4		12	4	0	Coal on Hand
A. Ricca	4	8		4	8	5	
P. L. Sears	8	12	Sam Ware	8	12	5	434

Voyage #5. Journal from Copenhagen towards New York

H	K	Course Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks
A. M.	1								
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									

West	W ¼ N	SW	4	57	30.09	Moderate breeze, slight Westerly swell, cloudy.
West	W ¼ N	SW	3	58	30.10	Weather remains the same as in the preceding watch.
West	W ¼ N	SW	3	60	30.12	9 A. M. Retarded clocks 19 min. Gentle breeze. Smooth sea. Fine & clear weather.
				Running time 24h. 19m. A. S. 8.9.		

Var. Course	Dist. by Log	Dist. by Obs.	Diff. of Lat.	Departure	Lat. by D. R.	Lat. by Obs.	Diff. of Long.	Long. by D. R.	Long. by Obs.
Noon	S 85° W	216			N 52° 15'			E 38° 40'	
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	Clutch	12	4	5	
F. L. Sears	4	8		4	8	5	30 tons
J. W. Fleming	8	12		8	12	0	
A. Rieca	12	4		12	4	0	Coal on Hand
F. L. Sears	4	8		4	8	5	
	8	12	Petersen	8	12	5	344

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 29th day of August, 1815
A. M. 1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
P. M. 12										
Var. Course, Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
Noon S 53 1/2° W 312										
1										
2										
3										
4										
5										
6.20										
7										
8										
9										
10										
11										
P. M. 12.										
Officer on Watch										
J. W. Fleming	From	To	Men on	Lock	Out	From	To	Lights Running	Exhibited Anchors	Coal Consumed
A. Rica	12	4	Byonness			12	4	5		
P. L. Sears	4	8				4	8	5		
J. W. Fleming	8	12				8	12	0		30 tons
A. Rica	12	4				12	4	0		Coal on Hand
P. L. Sears	4	8				4	8	5		
	8	12	Sam	Ware		8	12	5		246

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H A. M. 1	K. Tenth Standard	Course	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	Remarks 1st day of August, 1918
2								Mod. breeze, smooth sea, thick fog.
3								
4		N 80° W	W x S $\frac{1}{2}$ S	S SW	60	29.98		5.00 Took sounding 75 fathoms water.
5		S 80° W	S W x W					5.45 Took sounding 56 fathoms water.
6								
7		S 80° W	S W x W	S SW	64	29.97		6.00 c/c S. C. S 80° W.
8								Similar weather preceding.
9								9 A. M. Retarded clocks 20m.
10								Mod. breeze. Smooth sea. Thick fog all watch.
11		S 80° W	S W x W	S SW	65	29.96		
12				Running time 24th. 30m.	Speed 9 knots.			
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.								
Noun Various 219 43 44 81° 50								
1								
2								
3								
4		S 80° W	S W x W $\frac{1}{2}$ W	S SW	65	29.93		Mod breeze, smooth sea, overcast & misty.
5								
6								
7								
8		S 80° W	S W x W $\frac{1}{2}$ W	SW	64	29.93		Overcast & cloudy, mod. variable SSW to SW breeze. Smooth sea, local rain squalls.
9								
10								
11								
12		S 80° W	S W x W $\frac{1}{2}$ W	West	66	29.93		Light breeze, smooth sea. Thick fog most of watch.
P.M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming		12	4	Ware	12	4	5	
		4	8		4	8	5	
P. L. Sears		8	12		8	12	0	25 tons
J. W. Fleming		12	4		12	4	0	
		4	8		4	8	5	Coal on Hand
P. L. Sears		8	12	Alvarez	8	12	5	190 tons

Voyage #5. Journal from Copenhagen towards New York

M	K	Course Standard	Steering	Winds Force	Winds Dir	Thermometer Air Water	Barometer	Deviation Compass	Remarks 1st day of September, 1919
A. M.	1								
	2								
	3								
	4	S 80° W	SWxW½W	N ½ N	2 66		29.93		Light breeze, gentle southerly swell. Overcast, rain at times.
	5								
	6								
	7								
	8	S 80° W	SWxW½W	Var.	4 65		30.35		Overcast & rain to partly clear, fresh variable NE'y breeze & mod. sea.
	9								
	10								
	11								
	12								
a/c	11.50								9 A. M. Retarded clocks 12 min.
	12	S 85° W	WxS½S	ENE	5 67		30.10		Fresh breeze. Rough sea. Cloudy.
				Running time 24h. 31m.	A. B. 8.4.				
Var. Course Dist. by Log Obs. Diff. of Lat. Departure Lat by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.									
Noon S 55° W 206 41° 43'									
1									12.00 c/c West. 1.00 c/c N 85° W.
2									
3									
4		N 85° W	W ½ S	NE	5 62		30.12		Fresh breeze, rough sea, overcast.
5									
6									
7									
a/c	8.45	N 85° W	W ½ S	NE	4 60		30.15		Overcast & cloudy. Fresh NE breeze & rough running sea.
	9	West	WxN½S						
	10								
	11								
P.M.	12	West	WxS½S	NE	4 62		30.17		Mod. to fresh breeze & sea. Overcast.
Lights Exhibited									
Officer on Watch		From	To	Men on Look Out	From	To	Lights Running	Exhibited Anchor	Coal Consumed
J. W. Fleming		12	4	Petersen	12	4	5		
A. Ricca		4	8		4	8	5		25 tons
F. L. Sears		8	12		8	12	0		Coal on Hand
J. W. Fleming		12	4		12	4	0		
A. Ricca		4	8		4	8	5		
F. L. Sears		8	12	Clinch	8	12	5		162 tons

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H	K	Course Standard	Steering	Winds	Force	Thermometer Air	Water	Barometer	Deviation Compass	2nd day of September, 1916	Remarks
A. M.	1										
2											
3											
4											
5											
6											
7.10											
8											
9											
10											
11											
12											
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.											
Noon S 76° W 235 40° 42'											
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
P.M. 12											
Officer on Watch											
J. W. Fleming	From	To	Men on	Look	Out	From	To	Lights Exhibited	Coal Consumed		
A. Ricca	12	4	Alvarez	12	4	4	5	29 tons			
F. L. Sears	4	8		4	8	5	0	Coal on Hand			
J. W. Fleming	8	12		8	12	0	0				
A. Ricca	12	4		12	4	5	5				
F. L. Sears	4	8	Byonnes	4	8	5	133 tons				
	8	12		8	12	5					

Exhibit L. 3.

Voyage #5. Journal from Copenhagen towards New York

H	K	Tenths Standard	Course	Steering	Winds	Thermometer Air Water	Barometer	Deviation Compass	Remarks 3rd day of September, 1915
A. M. 1									
2									12.25 Fire Island L. V. abeam $2\frac{1}{4}$
3									mi. off. 3.20 Half speed. 3.25
4									Stopped for Pilot. 3.45 Pilot aboard
5									and full speed ahead.
6									Light breeze, smooth sea, clear.
7									
8									
9									
10									
11									
12									

Draft arriving at anchor—For 9 ft. 09 in.; Aft 17 ft. 06 in.

Var. Course	Dist. by Log	Dist. by Obs.	Diff. of Lat.	Departure	Lat. by D.R.	Lat. by Obs.	Diff. of Long.	Long. by D. R.	Long. by Obs.
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
P.M. 12									

7.07 Doctor cleared ship & stand by engine. S. T. Co. #20 alongside.
 7.16 Start heave up anchor.
 7.24 S. T. Co. #16 alongside.
 7.31 Anchor up & proceeded full ahead.
 9.05 Fast alongside Pier ft. of Van Brunt St., Bklyn & ring off engine.
 Assisted to Deck by above tugs.
 4.00 P. M. Started to steam tanks Nos. 1, 2, 3.
 Day ends clear, with light Easterly breeze. Night watchman on duty
 and lights attended to. Midnight finished steaming tanks Nos. 1, 2, & 3.
 Started other tanks.

Officer on Watch	From	To	Men on	Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	4	Clinch	12	4	5	
	4	8			4	8	5	

Saturday, Sept. 4, 1915.

At Dock ft. of Van Brunt St.
 Day begins misty with light Westerly breeze. Bar 30.00. Crew employed washing tanks.
 The day ends clear with light Westerly breeze. Lights attended to and night watchman on duty.

Sunday, Sept. 5, 1915.

At Dock foot of Van Brunt St.
The day begins overcast & misty. Bar 29.35.
6.00 to 8.00 A. M. Crew employed bailing water out of spare bunker on stbd side.
The day ends partly cloudy with light S Easterly breeze. Lights attended to and night watchman on duty.

Monday, Sept. 6th, 1915.

The day began light Westerly breeze, fine & clear. Crew refused to turn it being Labor Day. Boatswain & pumpman started to wash down tank at 9 A. M. and finished at 5 P. M.
6 P. M. Night watchman came on duty for the night. This day ends with light Westerly breeze. Bar 29.94.

Tuesday, Sept. 7th, 1915.

The day begins, calm, overcast & misty.
P. M. Started to put water in tank #1. Pumps would not work, put water in from top of tank by means of hose.
The day ends cloudy, light Southerly breeze.
6 P. M. Night watchman on duty, also watchman from Atlantic Basin.

Wednesday, Sept. 8th, 1915.

The day begins overcast with light SE breeze. Bar 29.93. Crew employed various ship duties.
9.20 A. M. Left Dock at Van Brunt St. 10.10 A. M. Arrived at Crane's Drydock. Towboats S. T. Ca. #5.
14. 15.
6 P. M. Night watchman came on duty. The day ends clear & fine, light Southerly breeze.

Thursday, Sept. 9th, 1915.

The day begins fine & clear, light SW breeze. Bar 29.99. Ship on Crane's Drydock. Crew employed in various ship duties.
The day ends fine & clear, light Westerly breeze. Bar 29.94.

Friday, Sept. 10th, 1915.

The day begins fine & clear, light NNE breeze. Bar 29.80. Ship still on Crane's Drydock. 7.45 A. M. Started to let water into the Drydock. 10.40 Towboats Fred B. Dalseg, Jr., C. P. Raymond and W. F. Dalseg along side. 12.00 Made fast alongside SS. Petrolite at dock ft. of Van Brunt St.
The day ends fine & clear, light Easterly breeze. Bar 29.80. 6 P. M. Night watchman came on duty.

Saturday, Sept. 11th, 1915

The day begins calm & clear. Bar 29.75.
7. A. M. SS. Petrolite left. Made fast to dock.
The day ends clear with light S SE breeze. Bar 29.75. 6.00 P. M. Night watchman came on duty.

Exhibit L. 3.

Sunday, Sept. 12th, 1915.
The day begins fine & clear, light Southerly breeze. Bar 29.80. Similar weather all day.
6.00 P. M. Night watchman came on duty.

Monday, Sept. 13th, 1915.
The day begins overcast & cloudy, light Westerly breeze. Bar 30.00.
The day ends fine & clear, light Westerly breeze. Bar 30.05.
6.00 P. M. Night watchman came on duty.

Tuesday, Sept. 14, 1915.
The day begins overcast, light SW alra. Bar 30.06.
6.00 Night watchman came on duty. The day ends fine & clear, light Westerly breeze. Bar 30.08.

Wednesday, Sept. 15, 1915.
The day begins overcast & misty, light Westerly alra. Bar 30.12.
6.00 Night watchman came on duty. The day ends fine & clear, light Westerly breeze. Bar 30.12.

Thursday, Sept. 16, 1915.
The day begins fine & clear with light NW breeze. Bar 30.14
8. A. M. SS. Rappahannock tied up alongside.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

Friday, Sept. 17, 1915.
The day begins fine & clear, light SW breeze. Bar 30.09.
6.00 P. M. Night watchman came on duty. The day ends cloudy, light Westerly breeze.

Saturday, Sept. 18, 1915.
The day begins fine & clear, light NE breeze. Bar 30.00.
6.00 P. M. Night watchman came on duty. The day ends cloudy, light Easterly breeze.

Sunday, Sept. 19, 1915.
The day begins overcast & raining, light SE breeze. Bar 29.85.
The day ends fine, partly cloudy, light Westerly breeze.
6.00 P. M. Night watchman came on duty.

Monday, Sept. 20, 1915.
The day begins hazy with light W SW breeze. Bar 29.78.
6.00 P. M. Night watchman came on duty. The day ends partly cloudy with moderate Westerly breeze.

Exhibit L. 3.

Tuesday, Sept. 21, 1915.

The day begins overcast with heavy rain, fresh W SW breeze. Bar 29.70.
6.00 P. M. Night watchman came on duty. The day ends partly cloudy, strong NW breeze.

Wednesday, Sept. 22, 1915.

The day begins fine & clear, strong NW breeze. Bar 30.05.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh Northerly breeze.

Thursday, Sept. 23, 1915.

The day begins clear & calm. Bar 30.23.
6.00 Night watchman came on duty. The day ends fine & clear, light SW breeze.

Friday, Sept. 24, 1915.

The day begins misty, light Westerly air. Bar 30.20.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Wly breeze.

Saturday, Sept. 25, 1915.

The day begins fine & clear, light NE breeze. Bar ———
6.00 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

Sunday, Sept. 26, 1915.

The day begins overcast, moderate SW breeze. Bar 29.70.
6.00 P. M. Night watchman came on duty. The day ends partly cloudy, strong Westerly breeze.

Monday, Sept. 27, 1915.

The day begins fine & clear, strong NW breeze. Bar 29.85.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh Northerly breeze.

Tuesday, Sept. 28, 1915.

The day begins fine & clear, fresh NW breeze. Bar 29.90.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh NW breeze.

Wednesday, Sept. 29, 1915.

The day begins fine & clear, moderate NW breeze. Bar 30.00.
6.00 P. M. Night watchman came on duty. The day ends fine & clear with light SW breeze.

Exhibit L. 3.

Thursday, Sept. 30, 1915.
 The day begins fine & clear, light Westerly breeze. Bar 30.13. Fine weather all day.
 6.00 P. M. Night watchman came on duty.
 6.30 P. M. Started to pump water into tank #4 to test bulkheads.

Friday, Oct. 1st, 1915.
 The day begins overcast & cloudy, light SE breeze. Bar 30.03. Commenced to rain in the forenoon and continued all day.
 5.00 P. M. #4 tank full, started to fill tanks #2 & #6.
 6.00 P. M. Night watchman came on duty.

Saturday, Oct. 2nd, 1915.
 The day begins overcast & raining, light Easterly breeze. Bar 30.03.
 7.30 A. M. Tank #6 full.
 1.00 P. M. Tank #2 full.
 The day ends overcast & raining, light Easterly breeze.
 6.00 P. M. Night watchman came on duty.

Sunday, Oct. 3rd, 1915.
 The day begins overcast, light Easterly breeze. Bar 29.95.

Monday, Oct. 4th, 1915.
 6.00 P. M. Tank #1 filled to test bulkhd.
 6.00 Night watchman came on duty.
 8.20 Started pump water into apt. cofferdam.
 12.30 Cofferdam full.

Tuesday, Oct. 5th, 1915.
 3.30 A. M. Commenced filling tank #6, testing pipe line & bulkhd.
 6.00 P. M. Night watchman came on duty.
 6.15 P. M. Started pump water into tank #7 & cofferdam.

Wednesday, Oct. 6th, 1915.
 1.45 A. M. Finished filling tank #7 & cofferdam.
 " " Started to pump water into tank #3.
 6.00 P. M. Night watchman came on duty.

Exhibit L. 3.

Thursday, Oct. 7th, 1915.
The day begins overcast, light SE breeze. Bar 29.98. Pumping various tanks all day.
6.00 P. M. Night watchman came on duty. The day ends overcast & raining, moderate easterly breeze.

Friday, Oct. 8th, 1915.
The day begins overcast, fresh SW breeze. Bar 30.03. Pumping out tanks all day.
6.00 P. M. Night watchman came on duty. The day ends clear, light Westerly breeze.
7.20 Started pump water out of #1 tank.
12.25 Stopped pump. No steam. #1 tank about half full.

Saturday, Oct. 9th, 1915.
The day begins fine & clear, fresh NW breeze. Bar 30.00.
5.30. Started pump No. 1 & drain various tanks.
4.00 P. M. All tanks drained and cleaned except #4.
6.00 P. M. Night watchman came on duty. The day ends fine & clear, fresh NW breeze.

Sunday, Oct. 10th, 1915.
The day begins partly cloudy, fresh NW breeze. Bar 30.03.
11. A. M. Towboats Dalzelline, W. F. Dalzell & Fred B. Dalzell, Jr., alongside. Left Van Brunt St., Brooklyn.
12.30 Arrived Pier 6, Constable Hook 12.40 Tugs left. 2.00 P. M. Started to pump out No. 4 tank.
6 P. M. Night watchman came on duty. 7.15 Tank #4 empty & drained

Monday, Oct. 11th, 1915.
The day begins fine & clear, light Westerly breeze. Bar 30.25.
9.30 Started to take in oil. 9.30 A. M. Started to coal.
6.30 P. M. Night watchman came on duty. The day ends fine & clear, light Westerly breeze.

Tuesday, Oct. 12, 1915
The day began fine & clear, light W breeze. Bar 30.30.
5.00 A. M. Finished loading. 10.00 A. M. Towboats S. T. Co. #15 & #17 alongside, left Oil Dock. 10.55
A. M. Anchored off Thompsonville. 6.15 P. M. Finished coaling.
Draft forward 25 ft. 6 in., aft 26 ft. 11 in.
Anchor lights attended to at sunset.

Wednesday, Oct. 13, 1915.
The day begins calm & foggy. Crew employed getting ship ready for sea.
The day ends partly cloudy, light SW breeze. Anchor lights attended to.
P. M., 11.45. Stand by. 11.50. Started to heave up anchor Bar 30.10.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

Exhibit L. 3.

H	K	Tenths	Courses Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	14th day of October, 1915	Remarks
A. M. 1					12.05 Anchor aweigh.	Full speed ahead.	12.25 Narrows.	1.55 Stand by engines.	2.12 Stopped to drop pilot.	2.15 Ambrose Channel L. V. abeam.
2			ExS½S	SExE¼E	2.25 Pilot away.	Full speed ahead.	Gentle breeze, smooth sea, partly cloudy.			
3			ExS½S	SExE¼E	SW 3 63					
4										
5										
6										
7										
8	46		ExS½S	SExE¼E	South 3 63		30.30			5.30 Fire Island L. Ship abeam. Overcast & cloudy, gentle Southerly breeze. Moderate Southerly swell.
9										
10										
11										11 A. M. Clock advanced 24'.
12	76	30	ExS½	SExE¼E	South 3 66		30.30			Gentle southerly breeze & moderate south swell, partly cloudy.
					Running time 9h. 11m. A. S. 8.5.					
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
Noon S 82° E 76 78 miles E of Ambrose Channel 40° 28' N										
1			E ¼ S	ESE						
2										
3										
4	108	32	E ¼ S	ESE	South 2 64		30.26			Light breeze, mod. Southerly swell, partly cloudy.
5										
6										
7										
8	110	32	E ¼ S	ESE	South 2 62		30.25			Weather remain the same as in the preceding watch.
9										
10										
11										
P. M. 12	172	32	E ¼ S	ESE	SSW 2 63		30.25			Light breeze, light southerly swell, light haze & occasionally vapor.
Officer on Watch										
J. W. Fleming		12		4	Limberg		12	4	5	
A. Ricca		4		8	Harold		4	8	5	
C. Jensen		8		12	C. M. Nellesen		8	12	0	Coal on Hand
J. W. Fleming		12		4	J. Fernandez		12	4	0	
A. Ricca		4		8	J. Christofersen		4	8	5	
C. Jensen		8		12	J. Aarre		8	12	5	

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Course Standard	Steering	Winds	Force	Thermometer Air	Water	Barometer	Deviation Compass	16th day of October, 1915	Remarks
A. M. 1												
2										2.30	Half speed.	Shipping heavy
3											water fore & aft.	
4	390	22	N 80° E	E ¼ S	ENE	7	62		30.18		Mod. gale, high seas, overcast, rain	
5											at times.	
6												
7												
8	934	4	N 80° E	E ¼ S	ENE	7	60		30.22		Overcast, cloudy, moderate E NE	
9											gale, high seas, vessel shipping	
10											heavy seas fore & aft.	
11										9 A. M.	Clock advanced 9'.	
12	409	15	N 80° E	E ¼ S	ENE	6	68		30.23		10.15 Full speed. Strong E. NE	
											breeze, partly cloudy, high sea, ves-	
											sel taking water fore & aft.	
											Running time 23h. 46m. A. S. 7.3.	

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.

Noon N 65° E 142 114

41° 41' N
64° 17' W

Var.	Course	Dist.by	Log	Dist.by	Obs.	Diff. of Lat.	Departure	Lat.by D.R.	Lat.by Obs.	Diff. of Long.	Long.by D. R.	Long.by Obs.
Noon	N 65° E	142	174					41° 41' N			64 17' W	

[illegible]

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Course Standard	Steering	Winds	Force	Air	Thermometer	Barometer	Deviation Compass	17th day of October, 1915	Remarks
A. M.	1											
2												
3												
4	506	25	N 87° E	Ex S	NW	4	53		30.09			Mod. breeze, slight NE swell, overcast.
5												
6												
7												
8	533	27	N 87° E	Ex S	NW		55		30.05			Overcast & cloudy to fine & clear, mod. NNW breeze & mod. sea.
9												9.00 A. M. Clock advanced 17'.
10												9.38 Engines stopped. 9.58 Engines full spd. Fine & clear, moderate WNW breeze, moderate sea.
11												
12	553	19	N 87° E	Ex S	WNW	4	61		30.00			
								Running time 23h. 46m.	A. S. 8.4.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.												
Noon	N 70° E	143	195						42.46			60.05

	Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
1	J. W. Fleming	12	4	A. Limberg	12	4	5	
2	A. Rica	4	8	Harold	4	8	5	
3	C. Jensen	8	12	C. M. Nielsen	8	12	0	
4	J. W. Fleming	12	4	J. Fernandez	12	4	0	
5	A. Rica	4	8	J. Christofersen	4	8	5	
6	J. Jensen	8	12	J. Aarre	8	12	8	
7								Fresh breeze, rough sea, clear.
8								
9								
10								Pine & clear, fresh W NW wind & rough running sea.
11								
12 P.M.								Pine & clear, strong N NW wind, rough beam sea, vessel taking water fore & aft.

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	M	K	Tenite Standard	Course	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 20th day of October, 1915
A. M. 1										
2										
3										
4	1071	32	N 75° E	SE ½ N	WNW 4	53		30.22		Mod. breeze, & NW'ly swell, over- cast.
5										
6										
7										
8	1104	23	N 75° E	SE ¼ N	WNW 3	51		30.18		Weather remains the same as in the preceding watch.
9										
10										
11										
12	1136	33	N 75° E	SE ¼ N	W-Var 2	44		30.12		9 A. M. Clock adv. 14'. Light Var. W'ly breeze, rain & hazy, mod. W'ly swell.
						Running time 23h. 48m.	A. B. 8.5.			
V. M. Course Dist. by Log Dist. by D.M. Lat. by Obs. Long. by D. R. Long. by Obs.										
None N 44° E 196 205 43 16 15 16										

Var. Course Dist. by Log Dist. by O.R. Dist. of Lat. Departure Lat. by D.R. Lat. by Obs. Dist. of Long. Long. by O.R. Long. by Obs.

Nose N 40° E. 136 205									
1									
2									
3									
4	1172	36	N 75° E	SE ¼ N	W SW 3	53		30.03	Light breeze, overcast & foggy, mod- erate swell.
5									
6									
7									
8	1205	33	N 80° E	SE ¼ S	Var.	2	47	29.94	6.30 c/v Stand Comp. N 80° E. Steer. Comp. E ¼ S. Overcast, thick fog to heavy rain. Mod. Var. SW'ly breeze & long Westerly swell.
9									
10									
11									
P.M. 12	1237	32	N 80° E	SE ¼ S	East	5	48	29.81	Overcast & heavy rain at times. Fresh E'ly breeze, heavy NE'ly swell.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Arris	12	4	5	Coal on Hand
A. Ricca	4	8	J. Christofersen	4	8	5	
C. Jensen	8	12	Harold	8	12	0	
J. W. Fleming	12	4	A. Limberg	12	4	0	
A. Ricca	4	8	J. Fernandez	4	8	5	
C. Jensen	8	12	C. M. Nielsen	8	12	5	

Coal on Hand

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Courses Tenths Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 21st day of October, 1915
A. M. 1 1357									
3									
4	1268	31 N 80° E	E ¼ S	NE	3 50		29.89		Gentle breeze, overcast & cloudy, heavy Northerly swell.
5									
6									
7									
8	1298	30 N 50° E	E ¼ S	NNE	4 50		29.92		Gentle to mod. NNE breeze, heavy NE swell, clear with passing clouds.
9									
10									
11									
12	1324	26 N 80° E	E ¼ S	NNE	3 52		29.95		9.30 Eng. stopped. 9.35 Eng full ahead. No change in weather.
13					Running time 23h. 46m. A. S. 8.9.				
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. 50° 07' N 41° 43' W									
1									
2									
3									
4	1353	29 N 80° E	E ¼ S	NNW	4 50		29.93		12.53 Put ship Sx E to calk Bunker hatch #5 port. 1.15 Slow. Swing ship to N NW. 1.33 full speed ahead. a/c N 80° E. Mod. breeze, rough sea, heavy Norly swell, cloudy. Clear with passing clouds. Gentle N NW breeze & heavy North-erly swell.
5									
6									
7									
8	1383	30 N 80° E	E ¼ S	NNW	3 48		29.94		
9									
10									
11									
P.M. 12	1411	28 N 80° E	E ¼ S	North	3 46		29.94		Weather same as watch preceding.
Officer on Watch									
		From	To	Men on Look Out		From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming		12	4	A. Limberg		12	4	5	
A. Ricca		4	8	Harold		4	8	5	
C. Jensen		8	12	A. Limberg		8	12	0	
J. W. Fleming		12	4	J. Fernandez		12	4	0	
A. Ricca		4	8	J. Aarre		4	8	5	Coal on Hand
C. Jensen		8	12	J. Christofersen		8	12	5	

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Course Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 22nd day of October, 1915
A. M. 1								
1								
2								
3								
4	1443	31	N 90° E	E ¼ S	NNW 3 48	29.92		Gentle breeze, heavy Northerly swell, cloudy.
5								
6								
7								
8	1473	31	N 90° E	E ¼ E	NNW 3 48	29.91		Clear with passing clouds, gentle N NW breeze & heavy NW'ly swell. 9 A. M. Clock advanced 14'.
9								11.45 c/c Std. Comp. N 83° E.
10								Light NNE breeze, partly cloudy, mod. no'y swell.
11								
12	1507	31	N 82° E N 83° E	E ¼ S E ¼ S	NNE 3 48 Running time 23h. 46m. A. S. 7.5.	29.87		
Var. Course Dist by Log Dist by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.								
Noon	180	179				52.01		41.06
1								
2								
3								
4	1537	33	N 82° E	E ¼ S	NNW 2 49	29.83		Light breeze, mod. Northerly swell, cloudy.
5								
6								
7								
8	1568	31	N 82° E	E ¼ S	Var 3 46	29.80		Overcast & cloudy, variable Westerly breeze & long mod. NW'ly swell.
9								
10								
11								
12	1600	33	N 82° E	E ½ S	SSE 3 47	29.74		Gentle SSE breeze, overcast & cloudy, mod. Nor'y swell.
P.M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	13		4	C. M. Nielsen	12	4	5	
A. Ricca	4		3	J. Limberg	4	8	5	
C. Jensen	8		13		8	12	0	
J. W. Fleming	13		4		12	4	0	Coal on Hand
A. Ricca	4		8	Harold	4	8	5	
C. Jensen	8		12	J. Fernandez	8	12	5	

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

Exhibit L. 3.

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A. M.	H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer		Barometer	Deviation Compass	Remarks
								Air	Water			
1												
2												
3												
4	1828	36		N 87° E	ExS¼S	SW	2	51		29.69		Light breeze, gentle swell, overcast.
5												
6												
7												
8	1862	34		N 87° E	ExS¼S	SW	3	52		29.40		Light to moderate SW wind, overcast & raining all through the watch, mod. SW sea.
9												9 A. M. Clock adv. 19°.
10												11.45 c/c S. C. East. Steer. ExS½S.
11												Mod. S SW breeze, overcast & heavy rain, hazy, mod. sea.
12	1893	31		East	ExS½S	SSW	4	52		29.62		
												Running time 23h. 44m. A. S. 7.8.
<div>Var. Course Dist by Log Dist by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.</div> <div>Noon N 54° E 201 186 N 55° 47' W 33° 00'</div>												
1												
2												
3												
4	1828	35		East	ExS½S	SSE	5	54		29.70		Fresh breeze, moderate sea, overcast & misty, heavy rain.
5				"	"	"	"	"	"	"	"	
6				"	"	"	"	"	"	"	"	
7												
8	1859	31		E ¼ S	ExS¼S	SSE	5	54		29.70.		Overcast & cloudy, fresh S SE wind & rough beam sea, vessel shipping heavy seas.
9												8.00 c/c S. C. E ¼ S. Steer. Comp. ExS¾S. Misty & overcast, fresh S SW breeze, rough sea, vessel taking water amidship & aft.
10												
11												
P.M. 12	1922	33		E ¼ S	ExS¼S	SSW	5	55		29.74		
<div>Officer on Watch</div> <div>J. W. Fleming 12 4 J. Fernandez 12 4 5</div> <div>A. Ricca 4 8 Harold 4 8 5</div> <div>C. Jensen 8 12 12 0 0</div> <div>J. W. Fleming 12 4 12 4 0</div> <div>A. Ricca 8 4 8 5 5</div> <div>C. Jensen 8 12 12 5 5</div>												
										Coal Consumed		
										Coal on Hand		

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

M	K	Courses Tenths Standard	Steering	Winds Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 25th day of October, 1915
A. M. 1								
2								
3								
4	2026	34 E ¼ S	ExS¾S	SSW 4	54	29.78		Mod. breeze & sea, overcast, rain at times.
5								
6								
7								
8	2057	31 E ¼ S	ExS¾S	SSW	54	29.84		Overcast & local rain & fog through the watch. Fresh SSW wind & rough beam sea. C. Ex S. Steer. C. 8.10 c/c Std. 9.00 A. M. Clock Adv. 20'.
9								
10								
11								
12	2084	27 Ex S	SEEx¾E	SSW 5	55	29.90		Weather remains the same as watch preceding.
Running Time 23h. 40m. A. S. 8.								
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.								
Noon N 62° E 191 190 57° 21' N 28° 08' W								
1								
2								
3								
4	2115	31 Ex S	SEEx¾E	South 5	55	29.92		Fresh breeze, rough sea, overcast & raining.
5								
6								
7								
8	2146	31 ExS¾S	SE¾E	South 4	54	29.95		Fresh to mod. Southerly breeze, overcast & heavy rain through the watch. Rough broken seas.
9								
10								
11								
12	2170	24 ExS¾S	SE¾E	Var.	5 54	30.05		Overcast & misty to clear, fresh var. SW to NW breeze, rough cross sea & So'y swell.
P. M. 12								
Officer on Watch								
		From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming		12	4	A. Limberg	12	4	5	
A. Ricca		4	8	C. M. Nelissen	4	8	5	
C. Jensen		8	12		8	12	0	
J. W. Fleming		12	4		12	4	0	Coal on Hand
A. Ricca		4	8	J. Fernandez	4	8	5	
C. Jensen		8	12	Harold	8	12	5	

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

M	K	Tenths	Course Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 28th day of October, 1915
A. M.	1									
2										
3										
4	2202	32	ExS½S	SE½E	NW	4	54	30.13		Moderate breeze, heavy Southerly swell, partly cloudy.
5										
6										
7										
8	2234	32	ExS½S	SE½E	NW	3	54	30.17		Weather remains the same as in the preceding watch. 9 A. M. Clock advanced 20'.
9										
10										
11										
12	2244	30	ExS½S	SE½E	NW	3	55	30.17		Gentle NW breeze, cloudy, mod. southerly swell.
					Running time 23h. 34m.		A. S. 8.9.			
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
Noon N 77° E 180 21										
1										
2										
3										
4	2256	32	ExS½S	SE½E	NNE	4	53	30.12		Moderate breeze, cloudy & overcast. Moderate Southerly swell.
5										
6										
7										
8	2328	32	ExS½S	SE½E	NNE	4	52	30.02		Overcast, mod. NNE breeze & mod. NEly sea.
9										
10										
11										
12	2361	33	ExS½S	SE½E	Var.	4	53	29.92		Overcast, light rain & haze at times. Moderate variable NE to SE winds. Mod. sea.

Officer on Watch	From	To	Men on Look Out	From	To	Lights Exhibited Running Anchor	Coal Consumed
J. W. Fleming	12	4	J. Aarre	12	4	5	
A. Ricca	4	8	J. Christoffersen	4	8	5	
C. Jensen	8	12	Nielsen	8	12	0	
J. W. Fleming	12	4	Harold	12	4	0	Coal on Hand
A. Ricca	4	8	Limberg	4	8	5	
C. Jensen	8	12	Fernandes	8	12	5	

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Courses Tenths Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks 27th day of October, 1915
A. M. 1									
1									
2									
3			SE ½ E	SE	6	54	29.60		Strong breeze, mod. sea, overcast & hazy.
4	2395	34	Ex S ½ S						
5									
6									
7	2428	33	Ex S ½ S	SE ½ E	SE	6	53	29.42	Overcast, heavy rain. Strong SE wind & rough sea.
8									9.00 A. M. Clock advanced 24'.
9									Moderate gales, squally high sea.
10									Vessel laboring & taking water fore & aft.
11	2461	33	Ex S ½ S	SE ½ E	SE	7	53	29.25	
12									Running time 23h. 37m. Ave. Speed 8.
Var. Course Dist. by Log Dist. by D.R. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D.R. Long. by Obs.									
Noon N 80° E 189 189 58° 50' N 15° 49' W									
1							29.20	12.30	Steering Comp. ENE.
2							29.12	2.30	Half speed. Put ship head to wind. 3.35 Slow. Strong gale, high sea, overcast, heavy rain.
3							29.08	29.02	
4	2469	8	S ½ E	S x E	9	54	29.02	7.00	Course S x E. Weather remain the same as in the preceding watch.
5							28.96		
6							28.91		
7							28.84		
8	2469	0	S x E	SSE	9		28.80		Weather moderating. Strong So'y breeze, heavy swell, clear.
9							28.75		
10							28.66		
11							28.58		
12	2477	8	S 68 E	SE ½ E	South	6	53	28.66	10.30 Full speed ahd. 10.30 c/c Std. S 68° E. Steer. SE ¼ E.
P.M. 12									
Officer on Watch									
J. W. Fleming	12	4		Men on Look Out	From	To		Lights Exhibited	Coal Consumed
A. Rice	4	8	Christofersen		12	4	5		
C. Jensen	8	12	J. Aarre		4	8	5		
J. W. Fleming	12	4			8	12	0		Coal on Hand
C. Jensen	4	8	J. Fernandez		12	4	0		
	8	12	Harold		4	8	0		
					8	12	5		

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	28th day of October, 1915	Remarks
A. M. 1								23.65			
2								28.65			
3								28.64			
4	2498	21	S 68° E	SE ¼ E	SSE	8	53	28.63			Fresh gale, high sea, clear to cloudy, rain at times.
5								28.62			
6								28.62			
7								28.60			Fresh to strong SSE gale, high seas. 6.30 Eng. slow. Ship hove to shipping heavy seas at midship.
8	2506	6	Various	Various	SSE	9	53	28.60			9.00 A. M. Clock advanced 6'.
9								28.58			
10								28.58			
11	Lost							28.60			9.15 Eng. half speed. Fresh to moderate gale, partly cloudy, high sea.
12	Rotator		Various	Various	SSE	8	53	28.60			
							Running time 23h. 47m. A. S. 43.				
Var. Courses Dict. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D. R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.											
Noon N 19° E			101					53° 08			12. 36
1											
2											
3											
4	--	--	Various	Various	SSE	8	53	28.78			Fresh gale, high sea, cloudy, rain squalls at times. Still going half speed.
5											
6											
7											
8	--	--	Various	Various	SSE	7	53	29.06			Fresh to mod. SSE gale. Clear with passing clouds & local rain squalls. Ship shipping heavy seas.
9								29.15			
10											
11											
P. M. 12			Various	Various	SSE	7	52	29.24			No change in weather.
Officer on Watch											
J. W. Fleming		12		4	Nielsen		12	4	5		
A. Ricca		4		8	Limborg		4	8	5		
C. Jensen		8		12			8	12	0		
J. W. Fleming		12		4	Harold		12	4	0		Coal on Hand
A. Ricca		4		8			4	8	5		
C. Jensen		8		12	Aarre		8	12	5		

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses	Steering	Winds	Force	Thermometer	Barometer	Deviation	Remarks
			Standard				Air	Water	Compass	29th day of October, 1915
A. M. 1										6.59 Stopped by British Cruiser in
2										Lat. Long. 7.30 British
3				Various	SSE	7	51	29.32		officer boarded ship. 7.31 Eng. half
4				"						speed ahead. 7.35 Received order
5				"						from Cruiser to proceed on our voy-
6				"						age. Weather clear with passing
7				SE $\frac{1}{2}$ E	SSE	6	51	29.42		clouds, fresh SSE breeze & rough
8										sea. 8.10 Eng. full speed ahead.
9										9.00 A. M. Clock adv. 12. 10.10
10.10	2507			11.21 c/c SE $\frac{1}{2}$ E						Streamed log rec. 7. 10.30 Hoisted
11				SE $\frac{1}{2}$ E	SSE	5	53	29.50		ship's numbers to British Cruiser.
12	2518	11	S 70° E	SE $\frac{1}{2}$ E						Weather same as watch preceding.
Running time 23h. 56m. A. S. 1.8.										
Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.										
Noon N 73° E 44° 58° 56°										
1			S 72° E						12.45 a/c Standard Comp. S 72° E.	
2										
3										
4	2542	33	S 72° E	SE $\frac{1}{2}$ E	SSE	6	53	29.54		Strong breeze, rough sea, clear,
5										passing clouds.
6			S 83° E	SE $\frac{1}{2}$ E	SE $\frac{1}{2}$ E				6.30 c/c S. C. S 83° E. Steer. Comp.	
7									SE $\frac{1}{2}$ E $\frac{1}{4}$ E. Clear with passing	
8	25.68	26	S 83° E	SE $\frac{1}{2}$ E	SSE	6	52	29.60		clouds, strong SSE breeze & rough
9										sea.
10										
11										
P. M. 12	2596	28	S 83° E	SE $\frac{1}{2}$ E	SSE	6	52	29.63		Clear with passing clouds. Strong
										SSE breeze, rough moderating sea.
Officer on Watch										
	Watch	From	To	Men on	Look Out	From	To	Lights Exhibited	Coal Consumed	
J. W. Fleming	12	4	Christofersen	12	4	8	5			
A. Ricca	4	8	Fernandez	4	8	12	5			
C. Jensen	8	12		8	12	4	0			
J. W. Fleming	12	4	Nelisen	12	4	8	5			Coal on Hand
A. Ricca	4	8	Limberg	4	8	12	5			
C. Jensen	8	12		8	12	4	0			

Exhibit L. 3.

Voyage #6. Journal from New York towards Copenhagen Via Kirkwall

H	K	Tenths	Courses Standard	Steering	Winds	Force	Thermometer Air Water	Barometer	Deviation Compass	Remarks
A. M.	1		S 56° E	SE ½ S					1.00 A. M. a/c Stand Comp. S 56° E.	31st day of October, 1915
	2								Steering SE ½ S.	
	3								Fresh breeze, moderate sea, clear,	
	4	No	S 56° E	SE ½ S	South	5	52	29.72	passing clouds.	
	5		S 44° E	SE x S ½ S					6.00 Eng. half speed ahead.	
	6	log							6.30 Stopped engine.	
	7								6.40 c/e S. C. S 44° E full speed.	
	8	out	Various	Various	South	5	50	29.73	6.50 Noup Head L. H. S.W.	
	9		S 56° E	S x E ½ E					Similar weather preceding.	
	10								9.07 Struck a reef in Westray Firth. Engines full speed astern. Ordered	
	11								all hands to clear away the boats. Sounded amidships and got 5 fathoms.	
	12								Forward 2 ½ fathoms. Aft 5 ½ fathoms. 10.05 Started to pump out #1 tank.	
									10.10 British torpedo boat "B" came out. 10.55 Torpedo boat took a hawser.	

Var. Course Dist. by Log Dist. by Obs. Diff. of Lat. Departure Lat. by D.R. Lat. by Obs. Diff. of Long. Long. by D. R. Long. by Obs.

1	11.00 A. M. Full speed astern, and Torpedo boat pulling. 11.10 Hawser									
2	parted. 11.15 British Torpedo boat "C" came out and put wire hawser									
3	aboard. 11.24 Engines full astern. 11.26 Wire parted and fouled pro-									
4	peller, stopped engines. 12.28 Tug Plover came alongside. 12.45 Tug									
5	took line and attempted to pull ship off. Parted the three (3) lines.									
6	1.30 Lowered boats ready to abandon ship. 3.30 Ship not moving. 4.00									
7	P. M. Crew left for Kirkwall on tug Plover. 5.00 P. M. Captain, second									
8	mate, Chief Eng., First Second Asst. Eng., Wireless operator and seaman									
9	J. Christoffersen left ship and went aboard British Patrol boat Evening									
10	Star and stood by all night.									
11										
12										

P. M. 13

Officer on Watch	From	To	Men on Leek Out	From	To	Lights Exhibited Running Ancher	Coal Consumed
J. W. Fleming	12	4	Limberg	12	4	5	
	4	8		4	8	5	
	8	12		8	12	0	
	12	4		12	4	0	
	4	8		4	8	5	
	8	12		8	12	5	Coal on Hand

Exhibit L. 3.

Remarks—1st day of November, 1915.

Stranded in Westray Firth.

2.00 A. M. Men standing by returned to ship. 9.30 A. M. British trawlers Britannia and Daisy alongside and Gloria astern trying to haul ship off. 10.00 A. M. Opened valves to let oil run down to sea level. 2.30 P. M. Crew returned from Kirkwall on tug Plover. 3.00 P. M. Plover took a line. 3.05. Line parted. 3.40 P. M. Plover put her own line aboard ship. 3.50 Line parted. 4.30 Oil leaking into fire room. 5.00 P. M. All hands left ship. The chief officer standing by on Evening Star.

Nov. 2nd, 1915.

Ship still in same place. Water inside rising and falling with the tide. Crew of Evening Star transferring provisions to their own ship. Chief officer in charge.



[fol. 209] IN UNITED STATES DISTRICT COURT

[Title omitted]

LIBELANT'S EXHIBIT 3—Filed July 30, 1921

Steamship Log Book, in Civil Time, of the Steamship Llama, on
Voy. #6, New York to Copenhagen via Kirkwall

The force of the wind should be entered in its column according to
the following table:

0 Calm.....	6 Strong Breeze.....
1 Light Air.....	7 Moderate Gale.....
2 Light Breeze.....	8 Fresh Gale.....
3 Gentle Breeze.....	9 Strong Gale.....
4 Moderate Breeze.....	10 Whole Gale.....
5 Fresh Breeze.....	11 Storm.....
	12 Hurricane.....

[File endorsement omitted.]

(Here follows reproduction of log book, marked side folio pages 210-
255, inc.)

[fol. 256] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 6

Original

No. 2.

No. 1263.

Voyage

The United States of America,

(Cut)

Treasury Department,
Bureau of War Risk Insurance,
Washington, D. C.,

(Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in
funds current in the United States, to them or order), does make in-

surance and cause them to be insured at and from New York to Copenhagen and return to the United States with privilege of coaling in Scandinavia and with privilege of a port or ports of call for Admiralty instructions—

Sum Insured, \$115,000

One hundred fifteen thousand dollars upon the hull, machinery, boilers, equipment, stores and everything connected therewith of and in good Vessel called the "Llampa" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure on the said vessel, etc., as above, and shall so continue and endure until the said vessel, etc., shall be arrived at as above and until she has moored and anchored twenty-four hours in good safety. The said vessel, etc., for so much as concerns the insured, by agreement between the insured and insurers in this policy, are and shall be valued at \$115,000.

[fol. 257] Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are the men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detainerments of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

In the case of an iron or steel vessel, average payable without deduction of new for old.

And in case of loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard, and recovery of the said vessel, etc., or any part thereof without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and [fol. 258] agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this insurance, by the insured, or their assigns at and after the rate of 3 per cent.

Premium, \$3,450

It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel insured hereunder shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted by the insured not to sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special Port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to [fol. 259] a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proofs of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of belligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assist the operations of belligerents; or if she carries supplies to war vessels of belligerent nations. J. B. B. P.

[fol. 260] Countersigned at Washington, D. C., this 8th day of October, 1915.

J. Brooks B. Parker, Assistant Director.

Warranted free from claim consequent upon or arising from the ultimate destination of the cargo being the country of a belligerent.
J. B. B. P.

Copy

Application for Vessel Insurance

Voyage or Time Policy

The United States of America,
Treasury Department,
Bureau of War Risk Insurance,
Washington, D. C.

Insurance is limited to American vessels against the risks of war only. Rates on Vessels will be quoted for ninety-day periods or for voyage.

Owner: Standard Oil Company (New Jersey), to whom loss payable, them or order.

Vessel, Str. "Llama" (ex "Brilliant"); Valuation, \$115,000; sum insured, \$115,000; rate, 3%; premium, \$3,450.

Voyage, at and from New York to Copenhagen and return to the United State with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions.

Application is made for insurance against war risk on the form of policy issued by the Bureau of War Risk Insurance, the following conditions being imposed, which may not be changed except under [fol. 261] signature of the Director of the Bureau of War Risk Insurance:

A. The valuation of the vessel shall be either the valuation of the marine insurance policy or as agreed with the Director.

B. If any marine insurance is in force, particulars of one policy shall be filed in on the back of this application.

C. Warranted that the vessel will sail within fifteen days from the date on which this insurance was effected.

Johnson & Higgins, (Signed) C. M. Parker, for Applicant.

No. 1263. The United States of America, Treasury Department, Bureau of War Risk Insurance. Voyage. Standard Oil Company (New Jersey). "Llama." Sum insured, \$115,000; rate, 3%; premium, \$3,450. Johnson & Higgins, New York City. (Rubber stamped:) Effected by Johnson & Higgins, 49 & 51 Wall St., N. Y. Entered 57202. Examined. O.

[fol. 262]

IN UNITED STATES DISTRICT COURT

EXHIBIT L. 7.

Original

No. 4.
Freight.

No. 1269.

The United States of America

(Cut)

Treasury Department,
Bureau of War Risk Insurance,
Washington, D. C.

Standard Oil Company (New Jersey),

on account of whom it may concern (in case of loss, to be paid in funds current in the United States, to them or order), does make insurance and cause them to be insured at and from New York to Copenhagen with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions—

Sum Insured, \$45,000

forty-five thousand dollars upon the freight and advances, if any, of the vessel called the "Llama" or by whatsoever other name or names the said vessel is or shall be named or called, beginning the adventure upon the said freight, etc., as above and shall so continue and endure until the said vessel shall be arrived at as above, and until she has anchored twenty-four hours in good safety.

Touching the adventures and perils which the insurer is contented to bear, and does take upon itself, they are of men-of-war, letters of marque and countermarque, surprisals, takings at sea, arrests, restraints and detainments of all kings, princes, and peoples, of what nation, condition, or quality soever, and all consequences of [fol. 263] hostilities or warlike operations, whether before or after declaration of war.

Warranted not to abandon in case of blockade and free from loss arising from an attempt to evade blockade, but, in the event of blockade, to be at liberty to proceed to an open port and there end the voyage.

Warranted not to abandon in case of capture, seizure, or detention until after condemnation.

Warranted free from any claim for interest, loss of market, or damage by deterioration due to delay.

And in case of any loss or misfortune, it shall be lawful to the insured, their factors, servants, and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said

freight and advances, or any part thereof, without prejudice to this insurance, to the charges whereof the insurer will contribute according to the rate and quantity of the sum herein insured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this insurance, by the insured or their assigns, at and after the rate of $1\frac{3}{4}$ per cent.

Premium, \$787.50.

Warranted by the insured free from claim consequent upon loss of time whether arising from a peril insured against or not. [fol. 264] It is agreed that this insurance shall not be vitiated by a deviation from the voyage provided the same be communicated to the Bureau of War Risk Insurance as soon as known to the insured and an additional premium paid if required.

It is understood and agreed that the vessel, the freight and advances of which are insured hereunder, shall not enter or leave, or attempt to enter or leave, any port which is known to be blockaded by the Powers at War.

Warranted that the vessel, the freight and advances of which are insured hereunder, shall not sail for any port or ports which at the time of clearance are on the special list of the Bureau of War Risk Insurance, but at the discretion of the Bureau this policy may, by endorsement made hereupon, cover to such special port at an additional premium named by the Bureau.

Warranted to the best of the knowledge and belief of the insured no shipment of absolute contraband will be loaded and that no conditional contraband will be loaded when the articles constituting such conditional contraband are destined for the use of the armed forces or of a government department of a belligerent state, or are consigned to the authorities of a belligerent state, or to a contractor established in a belligerent country who, as a matter of common knowledge, supplies articles of this kind to a belligerent state, or are [fol. 265] consigned to a fortified place belonging to a belligerent or other place serving as a base for the armed forces of a belligerent.

Warranted sailing under the American flag.

In the event of loss and claim, prompt notice should be given the Bureau of War Risk Insurance. Claims will be paid within thirty days after complete proof of interest and loss have been filed with the Bureau.

In witness whereof, The United States of America has caused this policy to be signed by its Secretary of the Treasury, but it shall not be valid until countersigned by William C. De Lanoy or J. Brooks B. Parker.

W. G. McAdoo, Secretary.

Warranted that this insurance will be voided if the vessel sails on a voyage specially undertaken with the view to the transport of individual passengers who are embodied in the armed forces of bel-

ligerents, or with the view to the transmission of intelligence in the interest of belligerents; or if to the knowledge of either the owner, the charterer, or the master, she is transporting a military detachment of belligerents, or one or more persons who, in the course of the voyage, directly assist the operations of belligerents; or if she carries supplies to war vessels of belligerent nations. W. C. De L.

Countersigned at Washington, D. C., this 16th day of October, 1915.

William C. De Lanoy, Director.

Warranted that the goods are destined for the country of the port to which they are insured, and free of claim consequent upon or arising from their ultimate destination being a country of a belligerent. W. C. De L.

[fol. 266]

Copy

Application for Freight and Advances

The United States of America,

Treasury Department,

Bureau of War Risk Insurance,

Washington, D. C.

Insurance is limited to freight and advances, if any, of American vessels against the risk of war only.

Rates will be quoted for a voyage only.

Owner: Standard Oil Company (New Jersey), to whom loss payable, them or order.

Vessel, Str. "Llama" (ex "Brilliant"); sum insured, \$45,000; rate, 1¾%; premium, \$787.50.

Voyage, at and from New York to Copenhagen with privilege of coaling in Scandinavia and with privilege of port or ports of call for Admiralty instructions.

Application is made for insurance against war risks on the form of policy issued by the Bureau of War Risk Insurance, the following condition being imposed, which may not be changed except under signature of the Director of the Bureau of War Risk Insurance:

The insurance shall not exceed the amount of the steamer's freight collectible at destination, plus advances by the insured which are collectible at destination from consignee or owners of the goods.

Warranted that the vessel will sail within fifteen days from the date on which this insurance was effected.

Johnson & Higgins. (Signed) C. M. Parker, for Applicant.

[fol. 267] No. 1269. The United States of America, Treasury Department, Bureau of War Risk Insurance. Freight. Standard Oil Company (New Jersey). "Llama." Sum insured, \$45,000; rate,

1¾%; premium, \$787.50. Johnson & Higgins, New York City. (Rubber stamped:) Effected by Johnson & Higgins, 49 & 51 Wall St., N. Y. Entered 57202. Examined. —.

[fol. 268] IN UNITED STATES DISTRICT COURT

EXHIBIT L 8

Jan. 11th, 1917.

The Bureau of War Risk Insurance, Treasury Department, Washington, D. C.

DEAR SIR: "Llama"—Total Loss Oct. 1915.

We enclose herewith proofs of loss in support of claim for total loss in respect to the hull and freight of the above vessel. You insured the hull under your policy No. 1263 for \$115,000.00 and the freight under your policy No. 1269 for \$45,000.00.

We enclose copy of letter of Messrs. Kirlin, Woolsey & Hickox, also copies of the pleadings and decision in the case of Muller v. Globe & Rutgers Fire Insurance Company. Will you kindly give the settlement of this claim your proper attention.

Yours truly, Johnson & Higgins. — —, Manager Adjusting Department. JC.

Encl.

[fol. 269]

(Cut)

Bureau of War Risk Insurance, Marine Section,
Treasury Department,
Washington

March 18, 1918.

Messrs. Johnson & Higgins, 49 & 51 Wall St., New York, N. Y.

GENTLEMEN:

"Llama." Policies Nos. 1263 & 1269. Standard Oil Company (N. J.)

Referring to claims for total loss of hull and freight under the above-numbered policies, you are advised that the Bureau has given careful consideration to the documents you submitted in connection with these claims, but in view of the information now before it the Bureau cannot see its way clear to considering the vessel's loss as a result of war risk. In these circumstances all the papers sent to the Bureau are returned herewith. The log books are also returned under separate cover.

Very truly, Gilbert J. Murray, Deputy Commissioner.

[fol. 270] In the Matter of the Claim of the STANDARD OIL COMPANY (NEW JERSEY) for the Total Loss of the Steamship Llama, Her Cargo and Freight, under Policy No. 1269

Affidavit of David T. Warden on Claim for Total Loss of Freight on
S. S. Llama

STATE OF NEW YORK,
County of New York, ss:

David T. Warden, being duly sworn, says:

First. I am the manager of the foreign shipping department of the Standard Oil Company, a corporation of the State of New Jersey, hereinafter called the Standard Oil Company, and as such I have under my control and management the steamships owned by that company.

Second. The steamship Llama at all times herein mentioned was an American steamship, entirely owned by the Standard Oil Company and registered from the port of New York.

Third. On or about the 14th day of October, 1915, the steamship Llama being then staunch, strong and in all respects seaworthy and properly and fully manned and equipped, sailed from New York for the Port of Copenhagen, Denmark, via Kirkwall.

Fourth. The cargo of the steamship Llama on the voyage in question was laden on board the steamship under the direct supervision of the United States Customs Officials and all hatches were sealed by them with the Official Seal of the United States before the vessel sailed. Her cargo consisted of the following merchandise:

Gas Oil in bulk.....	1,473,116 gallons.
300 barrels of Mineral Colza Oil.....	15,230 "
30 barrels of Dry Glue, weighing.....	10,842 lbs.

[fol. 271] A certified copy of the outward manifest of the steamship Llama giving the then market value of the commodities is hereto annexed marked Schedule "A" and is hereby made a part of this affidavit.

Fifth. The cargo in question was at the time of the shipment and at all the times mentioned, the sole property of the Standard Oil Company (New Jersey) which had contracted to sell this cargo f. o. b. Copenhagen to Det Danske Petroleums Aktieselskab, a Danish corporation with offices at Copenhagen, which will hereinafter be referred to as the Danske.

Sixth. The agreement to sell this cargo consisting of gas oil in bulk, dry glue, and colza mineral oil in barrels to the Danske was made by correspondence between the Danske and the Standard Oil Company. Foreign Shipping Department. A true copy of this

correspondence is hereto annexed and marked Schedules B, B 1, B 2, B 3, B 4, B 5, B 6, and B 7. The details of the contract are as follows:

a. The Gas Oil

During the month of August, 1915, the Foreign Shipping Department of the Standard Oil Company received a letter from the Danske, enclosing an order for a full cargo of gas oil on the Llama, Schedules B 2, B 3.

This order was transmitted to the Foreign Sales Department and accepted by it, and a contract entered into which was referred to as Contract or Order No. 230, by which the Standard Oil Company agreed to ship on the Llama about 29,000 bulk barrels of gas oil, which was approximately the capacity of the steamship Llama and which the Standard Oil Company agreed to sell to the Danske at 3¢ per gallon, plus a freight of 2.99¢ per gallon, a freight amounting to 42s 6d, per ton. True copies of this acceptance and the confirmation thereof sent to the Danske in the letter from the Standard Oil [fol. 272] Company, dated August 25, 1915, Schedule B 4, are hereto annexed marked Schedules C and D, and hereby made part of this affidavit.

Thereafter the cargo so ordered and agreed to be sold was loaded on the steamship Llama and the capacity of the Llama at this loading was 1,473,116 gallons, amounting to 29,463.32 bulk barrels. At the agreed price of 3¢ per gallon, plus 2.99¢ freight to Copenhagen, excluding any other expenses than freight, the amount payable f. o. b. Copenhagen by the Danske was \$88,239.65. A true copy of the shipment note or invoice is hereto annexed marked Schedule E and hereby made part hereof.

The contract value of the oil thus shipped on board the Llama at New York was \$44,193.48, and the freight payable on delivery at the agreed contract rate of 2.99¢ per gallon was \$44,046.17.

b. The Dry Glue

During September, 1915, the Foreign Shipping Department of the Standard Oil Company received an order dated September 10, 1915, from the Danske for 25 barrels of dry glue, Schedule B 5.

This order was duly transmitted by the Foreign Shipping Department of the Standard Oil Company to the Cooperage Department, in a letter, a true copy whereof is hereto annexed as Schedule F, and accepted under date of October 2, 1915, by the Cooperage Department, in a letter, a true copy whereof is hereto annexed as Schedule G, the agreed price being 10¢ per pound, barrels \$1.26½ extra, plus lighterage, freight and loading expenses.

c. The Mineral Colza Oil

Thereafter the Foreign Shipping Department of the Standard Oil Company received an order from the Danske, dated September 15, 1915, for 300 barrels of mineral colza oil, Schedule B 6. This order

was duly transmitted to the Lubricating Department and accepted [fol. 273] by it as an addition to the order No. 230 at a price of 10¢ per gallon f. t. v. plus freight and loading expenses. A true copy of the acceptance by the Lubricating Department of this order is hereto annexed marked Schedule H, and is hereby made a part of this affidavit.

Thereafter the Foreign Shipping Department of the Standard Oil Company drew up a formal acceptance of the offer of the Danske for the 300 barrels of mineral colza oil and 30 barrels of dry glue. A true copy of this acceptance is marked Schedule I, and hereby made a part hereof. This confirmation of the additional orders was enclosed to the Danske in the letter dated October 6, 1915, Schedule B 7, as an addition to Order No. 230 under which the gas oil had been contracted for.

Thereafter the said 300 barrels of mineral colza oil and the said 30 barrels of dry glue were duly shipped on board the steamship Llama on or about October 11, 1915, and shipment notes or invoices were duly issued. True copies of shipment notes are hereto annexed marked Schedules J and K and hereby made part of this affidavit.

Thereafter an invoice for the entire cargo including the gas oil, the mineral colza oil, and the glue, and showing the extra charges payable thereon, is hereto annexed marked Schedule L and is hereby made a part of this affidavit.

The weight of the 300 barrels of colza oil and the 30 barrels of dry glue was 61.95 tons, and the freight thereon at the agreed rate of 42s. 6d., Schedule B 4, payable on delivery amounted in money of the United States to \$640.65 as shown on Schedule L.

The total freight therefore, which the Standard Oil Company had at risk on the steamship Llama at the time of her loss under the circumstances hereinafter described was \$44,686.82. The said freight was totally lost to the Standard Oil Company by reason of the loss of the steamship Llama.

[fol. 274] Seventh. Separate bills of lading for the cargo thus shipped were issued and signed by the master of the steamship Llama. A bill of lading was issued for the gas oil and a bill of lading for the 300 barrels of mineral colza oil and the 30 barrels of dry glue, and were signed by the master of the steamship Llama. True copies of these bills of lading are hereto annexed, marked Schedules M and N respectively.

Eighth. The provision that the vessel should go to Copenhagen via Kirkwall was inserted in the manifest and the bill of lading solely because of the restraint exercised by the British Naval Authorities on all vessels proceeding to Scandinavian ports by the northward of Scotland. The provision for the steamship Llama to call at Kirkwall was not a provision for a voluntary call at that port, but was a compulsory call arranged for the purpose of minimizing the delays resulting from the interception of vessels at sea which oftentimes happened after they had gone a considerable distance past the Orkney Islands.

From the beginning of the war, vessels with cargoes for Scandinavian ports have been intercepted by British war vessels and brought back, usually into Kirkwall and, finally, forced by this continual interception of our steamers, we were compelled to make an arrangement with the British authorities to have our vessels call at Kirkwall for examination of cargoes destined for Scandinavian countries. It was in pursuance of this compulsion that the steamship *Llama* mentioned Kirkwall in her documents as a port of call.

Ninth. I am informed by the master of the steamship *Llama* that on the morning of October 29, 1915, the steamship *Llama* was captured, seized and detained by a British ship of war and that a Naval Lieutenant with a prize crew was put on board her and took entire charge of the steamer and her cargo. Under the command of this Naval Officer the steamship *Llama* started for Kirkwall. While [fol. 275] proceeding towards that port, through Westray, Firth, a route selected by the Prize Officer aforesaid, and different from that intended to be followed by the master, the steamship *Llama* while under the command, orders and direction of the said Prize Officer, ran on a rock and in spite of prompt and efficient efforts to save her, her cargo and freight, she slipped off the rock and sank, becoming a total loss. Her freight and cargo were totally lost with her.

Tenth. The circumstances under which the stranding and consequent total loss of the steamer, her cargo and freight occurred are fully set forth in the extended protest of the master made at the port of Dundee, Scotland, November 13, 1915, a true copy of which is hereto annexed, marked Schedule O, and in the affidavit of the master, dealing in detail with the courses steered and orders given by the Naval Officer above mentioned, which is hereto annexed, marked Schedule P. Said Schedules O and P are hereby made a part of this affidavit.

Eleventh. The Standard Oil Company submits that the loss of the steamship *Llama* as aforesaid was due to the arrest, restraint and detainment of the British Admiralty Authorities, and was a consequence of warlike operations, and that accordingly, the loss of the steamship *Llama* was due to causes falling within the risks insured by Policy No. 1269 issued by the Treasury Department of the United States of America, through the Bureau of War Risk Insurance, on October 16, 1915, in which the freight on the cargo of the steamship *Llama* for the voyage aforesaid was insured up to \$45,000.

Twelfth. The Standard Oil Company has incurred expenses in attempting to save the steamship *Llama*, her cargo and freight after said stranding. The nature and amount of these expenses are as follows:

Allowance to the steamship Wico for going to the assistance of the steamship Llama	\$2,872.98
[fol. 276] Cable expenses incurred in connection with the sinking of the steamship Llama	209.75
Wages and maintenance of members of the crew who remained by the steamship Llama from the time of her stranding until the time of her sinking	271.88
Bill rendered by and paid to the British Admiralty for services in connection with the stranding £73:13:4 at 4.75	349.92
Total	<u>\$3,704.53</u>

Thirteenth. The premiums on said policy No. 1269 have been duly paid, and the Standard Oil Company has, in all respects, complied with all the warranties contained in said policy.

Fourteenth. The insurance effective on the steamship Llama and her freight at the time when she became a total loss, as aforesaid, was:

Policy covering hull, machinery, etc., U. S. A. War Risk Bureau	\$115,000
Policy covering freight U. S. A. War Risk Bureau	\$45,000

That, with the exception of the above, there was no other insurance covering the vessel or freight against War Risk perils.

David F. Warden.

Sworn to before me, this 30th day of December, 1916. M. H. Eames, Notary Public. (Seal.) Notary Public King's County. Certificate filed in New York County. Certificate No. 13.

Cleared by D. T. Warden, Agent, 26 Broadway, New York

Outward Foreign Manifest

Report and Manifest of the Cargo Laden at the Port of New York on Board the American S. S. Llana, whereof T. Clinch is Master (or Conductor), Bound for Copenhagen, Denmark, via Kirkwall

New York, October 13th, 1915.

Marks	Numbers	Packages and contents	Quantities, gallons	No. 1			No. 2			No. 3			No. 4			No. 5			Country of ultimate destination
				Value of domestic merchandise	Value of foreign merchandise	Value of foreign merchandise from bonded warehouse	Value of foreign merchandise not from bonded warehouse	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	Value of foreign merchandise on the passage (in transit) from one foreign country to another	
None																			
{M} O. T.	1/300	Gas oil in bulk	1,473,116	\$47,876															Denmark
		300 bbls mineral colza oil	15,230 lbs	1,523															"
{D. D. } P A		dry glue	10,842	1,084															"
Copenhagen																			

Copenhagen

This is to certify that the above cargo has been laden on board under direct supervision of United States customs inspectors and that all cargo hatches have been sealed with the official seal of the United States.

John Farrell, Deputy Collector of Customs. (Seal.)

Collector's Office, Oct. 18/16.

I hereby certify the above to be a true copy of the original on file in this office.

John Farrell, Deputy Collector. NJD. (Seal.)

Fee, 20 Cents ✓

BY N. J. D.

Port of New York.

[fol. 278]

Schedule B

Extract from Letter from the Det Danske Petroleums Aktieselskab to the Standard Oil Co. (N. J.), Foreign shipping Department, Dated June 2, 1915.

Unless you have not already arranged a Gas Oil boat loading for us in July, and probably written us to that effect, we shall be much pleased if you will kindly advise at your very earliest convenience which steamer you can arrange for us to carry this cargo.

 Schedule B 1

Confirmation of Cablegram

From D. T. Warden, New York,
 To Danske Petroleums Aktieselskab, Copenhagen.
 Dated, July 24th, 1915.
 No. —.
 Time sent, 1.15 P. M.
 Confirmed by Letter.
 P. C. L. C O.

Have arranged steamer Platuria early August Copenhagen account Skandinavisk;
 steamer Pioneer your account Copenhagen early August;
 steamer Polarine Malmo Stockholm, early August;
 steamer Muskogee Gothenburg Stockholm middle August;
 steamer Llama Gas Oil Copenhagen late August.
 Telegraph filling orders steamer Pioneer Polarine Muskogee.
 Warden.

[fol. 279]

 Schedule B 2

Extract from Letter from the Det Danske Petroleums Aktieselskab to the Standard Oil Co. (N. J.), Foreign Shipping Department, dated July 30th, 1915.

S. S. "Llama"

From your telegram through Messrs. Piesse & Sons, which reached us here on July 28th, A. M., we are pleased to note that you have arranged to give us S. S. "Llama" for a cargo of Gas Oil to Copenhagen after completion of her present trip to Stockholm, to be ready for loading at your side about end of August.

Enclosed we beg to hand you for orders sake Shipping List No. 350 with particulars.

Schedule B 3

Copy

No. 350.

Copenhagen, July 30th, 1915.

Shipping Particulars for S/S. "Llama"

Consignee: Det Danske Petroleums-Aktieselskab.

Destination: Copenhagen.

Cargo Consist of: Entire cargo about 4,200 tons of Gas Oil (Flash Test not below 90° C. on Pensky-Martens apparatus).

Port of loading: New York.

Cargo to be invoiced to: Det Danske Petroleums-Aktieselskab.

Drafts: Instructions.

Vessel to load on contract: —.

Invoicing price (f. o. b. Port of loading): —.

Tare: —.

Reduction: —.

Vessel expected to arrive at port of loading: About end of August.

Remarks: —.

Det Danske Petroleums-Aktieselskab.

—

[fol. 280]

Schedule B 4

Extract from Letter from the Standard Oil Co. (N. J.), Foreign Shipping Department, to Det Danske Petroleums Aktieselskab, dated August 25th, 1915.

Contracts.—I beg to enclose herewith confirmations of the following purchases made for your account:

Contract #230, dated August 19th, covering cargo of Gas Oil to be shipped by the S. S. "Llama."

I purchased this cargo for your account as soon as I got cable advice that this steamer had sailed from Copenhagen for New York on August 16th. You will note that contract for this cargo is also made out on a delivery basis, freight being figured at the rate of 42/6 per ton.

Schedule B 5

(Copy)

Copenhagen, September 10, 1915.

Standard Oil Company, Shipping Department, New York.

DEAR SIRs: We would here ask you to ship by the first tank-steamer, loading for Copenhagen, 25 barrels of dry glue in oak barrels.

Yours very truly, Det Danske Petroleums Aktieselskab.

25 barrels were ordered but we agreed to supply them with 30 barrels. (E. N.)

[fol. 281]

Schedule B 6

(Copy)

Det Danske Petroleums Aktieselskab

Kjobenhaven B den Sept. 15, 1915.

Mineral Colza Oil

Standard Oil Company, Shipping Dept., New York.

DEAR SIRs: We telegraphed you this day—through Messrs Piesse & Sons, London,—asking you to ship by s. s. "Pioneer" loading end of September for Copenhagen, 300 barrels of Mineral Colza oil, which we beg to confirm.

We further want by the next steamer for Conpenhagen loading in October/November 300 barrels of the same quality, which please note.

Yours very truly, (Sgd.) Det Danske Petroleums-Akteselskab.
Christian Holm, Adm. Direktor.

Schedule B 7

Extract from Letter from the Standard Oil Co. (N. J.), Foreign Shipping Department, to the Det Danske Petroleums Aktieselskab, Dated N. Y., Oct. 6, 1915.

SS. "Llama."—Repairs to this steamer will probably be completed by the end of this week, and she is expected to tender ready for cargo Saturday, October 9th.

I received instructions from you by letter to ship by first steamer available for Conpenhagen 300 barrels Mineral Colza Oil, also 30

barrels of Dry Glue, and I have arranged to ship these two lots by the SS "Llama."

[fol. 282] Contracts.—I beg to enclose confirmation of Addition to Contract No. 230, covering the 300 barrels Mineral Colza Oil, also 30 barrels Dry Glue to be shipped by the s/s "Llama." The price of the Mineral Colza Oil is 10¢ per gallon free-alongside-vessel, to which must be added delivering and loading expenses. The price for the Dry Glue is 10¢ per lb. The barrels are to be charged extra at 1.26½¢ each, plus lighterage and expenses for delivering and loading.

Schedule C

Standard Oil Co. (New Jersey)

Dated: Aug. 19, 1915. #230.

Please enter order for Det Danske Petroleums Aktieselskab about 29,000 Bulk—barrels Gasoil 32/35 94/95 @ 3¢ f. o. b., plus freight 2.99¢, privilege per gallon delivered @ 5.99¢.

Vessel ready, abt. Sept. 2nd at New York.

Cargo, s/s Llama for Copenhagen.

Standard Oil Co., (New Jersey), Foreign Shipping Dept.,
Per Otto Schleurrner.

(Rubber stamped:) Standard Oil Co. Incorporated in New Jersey,
by W. R. Mook, agent.

Schedule D

[fol. 283]

Standard Oil Co. (New Jersey),

Foreign Shipping Dept.,

26 Broadway

New York, August 19th, 1915.

Det Danske Petroleums Aktieselskab, Copenhagen.

Order No. 230

DEAR SIRs: I beg to confirm the following order, dated today:

Quantity, about 29,000 B/Bbls.

Quality and Brand, Gas Oil 32/35° 94/95°.

v. r. about October 7th, 1915.

Destination, Copenhagen.

to be shipped by the following vessel from New York: American
s/s "Llama"

Price of goods alongside vessel 5.99¢ per gallon delivered subject to the rules of the New York Produce Exchange.

Plus Insurance Premiums for War Risk on steamer, freight & cargo, also Marine Insurance on cargo.

Freight, 42/6 per ton—2.99¢ per gallon.

Rate of exchange, \$4.67.

Standard Oil Co., (New Jersey), Foreign Shipping Dept.,
Per Schl.

[fol. 284]

Schedule E

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey),

Foreign Sales Department

Order No. 5400.

Works: Bayonne.

Jersey City, N. J., October 12th, 1915.

Sold to Det Danske Petroleums Aktieselskab, terms cash, shipped via s/s "Llama."

Marks	Price	Amount
..... Gas Oil 32/35° B 1,473,116 gallons....	5.99	\$88,239.65

Destination: Copenhagen.

(Rubber stamped:) Checked by machine per M. R. M. Duplicate.
Det Danske Petroleums Aktieselskab. Correct, per D. Hallow.

Schedule F

(Copy)

Oct. 2, 1915.

Mr. James G. Newcomb, agent, room #305, building.

DEAR SIR: Please enter order for thirty (30) barrels Dry Glue to be delivered to the s/s "Llama."

This steamer is now in port and will be ready for cargo the end of next week. She will probably load at Bayonne, and I will give [fol. 285] you further instructions in regard to delivery later on.

This order is for account of Det Danske Petroleums Aktieselskab. Please render bills in duplicate for this Company.

Kindly confirm this order and let me know the price of this Glue.
Yours very truly, D. T. Warden. OS/H. (L.)

Schedule G

(Copy)

Standard Oil Company (New Jersey)

Cooperage Dept.

26 Broadway, New York, Oct. 2, 1915.

Mr. D. T. Warden, room 106, building.

DEAR SIR: We acknowledge receipt of your letter of even date in connection with 30 bbls. Dry Glue for account Det Danske Petroleum Aktieselskab for s/s "Llama."

This material we will arrange to get ready at once. Price 10¢ per lb. barrels \$1.26½ each extra.

Yours truly, Jas. G. Newcomb, per JM. H. (L.)

[fol. 286]

Schedule H

Standard Oil Co. (New Jersey),

Lubr. Oil Dept.

Dated: Oct. 2, 1915. (Additl. #230.)

Please enter order for Det Danske Petroleum Aktieselskab (300) Three hundred gallons, barrels, cases, Mineral Colza oil 300° @ 10 per Gallon f. t. v.

Privilege @ —.

Vessel ready Oct. 5/10th at N. Y.

Part Cargo, s/s Llama, for Copenhagen.

Standard Oil Co. (New Jersey), Foreign Shipping Dept.,
Per Otto Schleurner.

(Rubber stamped:) Accepted. Standard Oil Co. (N. J.), Lubricating Dept. H. D. Williams.

[fol. 287]

Schedule I

Standard Oil Co. (New Jersey),
Foreign Shipping Dept.

26 Broadway, New York, October 4th, 1915.

Det Danske Petroleums Aktieselskab, Copenhagen.

Additional to Order No. 230

DEAR SIRs: I beg to confirm the following order, dated October 2nd, 1915:

Quantity, 300 Barrels Mineral Colza Oil.
Quality and brand, 30 Barrels Dry Glue.
Probable Clearance, About October 7th, 1915.
Destination, Copenhagen.

to be shipped by the following vessel from New York: American s/s "Llama."

Price of goods alongside vessel Mineral Colza 10¢ per gallon f. t. v. plus freight & loading expenses. Dry Glue, 10¢ per lb. \$1.26½ plus ltge., freight & loading expenses Extra, subject to the rules of the New York Produce Exchange.

Plus Insurance Premiums for War Risk on steamer, freight & cargo also Marine Insurance on cargo.

Yours truly, Standard Oil Co. (New Jersey), Foreign Shipping Dept., per Schl.

[fol. 288]

Schedule J

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey)

Order No. 2645.

Works: Eagle.

Jersey City, N. J., Oct. 11, 1915.

Sold to Det Danske Petroleums Aktieselskab.

Shipped to Copenhagen.

Classification: S.S. Llama.

Gross..... 125,904
Tare..... 21,201

Net.. 104,703 Marks: M. OT.

Grade	Bbls.	Gallons	Price	Amount
300 M C	300	15230	10 ss.	1,523.00
		1/up		

(Rubber stamped:) Checked by machine per M. R. M. Det Danske Petroleums Aktieselskab. Triplicate. Correct. Per D. Hallow.

[fol. 289]

Schedule K

Payable at the office of the Standard Oil Company (N. J.), Commercial Trust Building, 15 Exchange Pl., Jersey City, N. J., in New York or Jersey City Exchange.

Standard Oil Company (Incorporated in New Jersey)

Cooperage Dept.
Works: Bayonne.

Jersey City, N. J., October 11th, 1915.

Sold to Det Danske Petroleums Aktieselskab.
Shipped to Copenhagen, Sweden.

Works No. K-9.

Acet'g No., K 28C.

Your Order No. —, Route Via SS Llama.

Thirty (30) barrels dry glue.

Frt.

Gross	12,860 lbs.
Tare	2,018 lbs.

Net	10,842 lbs.	@ .10	1,084.20
Thirty (30) barrels		@ 1.26½	37.95
			<u>1,122.15</u>

Marked: { DD }
 P A
 Copenhagen.

(Rubber stamped:) Checked by machine per M. R. M. Comp-tometer checked L. E. C. Room 908. Det Danske Petroleums Aktieselskab. Duplicate. Correct. Per D. Hallow.

[fol. 290]

Schedule L

Standard Oil Co. (New Jersey)

Jersey City, October 12th, 1915.

Invoice for Full Cargo of Gas Oil in Bulk & Mineral Colza Oil & Dry Glue in Barrels

Shipped per American s/s "Llama," New York/Copenhagen, for account and risk of Det Danske Petroleums Aktieselskab, Copenhagen.

Insurance: Covered as below.

Order No. 230. Per Gall. Del'd

1,473,116 Gallons Gas Oil 32/35°B @ 5.99¢	\$88,239.65
300 Barrels Mineral Colza Oil 15,230 Gallons @ 10¢ per gallon f. t. v.	1,523.00
30 Barrels Dry Glue, 10,842 lbs. @ 10¢ per lb. f. t. v.	1,084.20
	<hr/>
	2,607.20
	<hr/>
	90,846.85

Charges

Oil Inspection 4,439 Tons	33.29
Consular Fee	4.05
(30) Thirty Barrels @ \$1.26½ each	37.95
Expenses Loading 300 bbls. ....	.....
Mineral Colza, 30 bbls. ....	.....
Dry Glue	158.33

Insurance Premiums

War Risk: Steamer, \$115,000 at 3%	3,450.00
Brokerage 5% on	172.50
War Risk: Freight \$45,000 @ 1¾%	787.50
Brokerage 5% on \$35,000, 2½% on balance	34.99
[fol. 291]	
War Risk: Cargo, \$67,000 @ 1.65	1,105.50
Marine: Cargo, \$67,000 @ 1.51	1,011.70
Freight on 300 Barrels Mineral Colza Oil, 30 Barrels Dry Glue .....	.....
61.95 Tons @ 42/6—£131-12-11 @ \$4.8665	640.65
	<hr/>
	7,436.46
	<hr/>
	\$98,283.31

Invoice payable on discharge of cargo.

(Rubber stamped:) Checked by machine per M. R. M. Dupli-
cate. Correct. Per D. Hallow.

Schedule M

(Cut of Ship)

Shipped in apparent good order and condition by Standard Oil Co., (New Jersey) on board the American Steamship called the "Llama," whereof Clinch is master, now lying in the Port of New York and bound for Copenhagen via Kirkwall. To say full cargo

of gas oil 32/35° in bulk, 1,473.116 payable gallons of 6¾ lbs. each to be delivered at the port of Copenhagen, or so near thereto as she can safely get unto Det Danske Petroleum's Aktieselskab, or to his or their assigns, he or they paying freight at the rate of as agreed.

Contents, quality, weight and gauge unknown.

Not responsible for leakage or deterioration of quality—General average payable according to York-Antwerp Rules 1890.

It is mutually agreed that the ship shall have liberty to sail without pilots; to tow and assist vessels in all situations; to deviate for [fol. 292] the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods, and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed, that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause wheresoever occurring; by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, marines, or other servants of the ship owner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them or by the Ship's Husband or Manager); nor for heating, decay, putrefication, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk, or transhipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Embroideries, Works of Art, Silks, Furs, China, Porcelain Watches, Clocks or for goods of any description which are above the value of \$500 per package, unless bills of Lading are signed therefor, with the value therein expressed, and a special agreement is made.

[fol. 293] 2. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Carrier shall have a lien on the goods for all fines or damages which the ship or cargo may incur or suffer by reason of the incorrect or insufficient marking of packages or description of their contents.

4. Also, that in case the Ship shall be prevented from reaching her destination by Quarantine, the Carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

5. Also, that if the goods be not taken by the Consignee within such time as is provided by the regulations of the port of discharge, they may be stored, by the Carrier at the expense and risk of their owners.

6. Also, that full freight is payable on damaged goods but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

7. Also, that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the shipper.

8. Also, that in the event of claims for short delivery when the Ship reaches her destination, the price shall be the market price at the port of destination on the day of the Ship's entry at the Custom House, less all charges saved.

And finally, in accepting this Bill of Lading, the Shipper, the Owner, and Consignee of the goods and the holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and [fol. 294] conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said Ship hath affirmed to (3) three Bills of Lading all of this tenor and date, numbered consecutively, one of which being accomplished, the others to stand void.

It is also mutually agreed, that this shipment is subject to all terms and provisions of, and to all the exemptions from liability contained in the Act of Congress of the United States relating to Navigation, &c., approved on the 13th day of February, 1893.

Dated in New York this 13th day of October, 1915.

20 hours consumed in loading entire cargo.

Thos. E. Clinch, Master.

Schedule N

(Cut of Ship)

Mineral Colza Oil. Marked: {M}O. T. 1/300.

Dry Glue. Marked: {D. D.} P. A. Copenhagen.

Shipped in apparent good order and condition by Standard Oil Co., (New Jersey) on board the American Steamship called the "Llama," whereof Clinch is master, now lying in the Port of New

York and bound for Copenhagen via Kirkwall. To say 300 barrels mineral Colza Oil 300° (containing 15,230 gallons); 30 barrels Dry Glue (gross weight 12,860 lbs.) to be delivered at the port of Copenhagen, or so near thereto as she can safely get, unto Det Danske [fol. 295] Petroleums Aktieselskab, or to his or their assigns, he or they paying freight at the rate of as agreed.

Contents, quality, weight and gauge unknown.

Not responsible for leakage or deterioration of quality—General average payable according to York-Antwerp Rules 1890.

It is mutually agreed that the ship shall have liberty to sail without pilots; to tow and assist vessels in all situations; to deviate for the purpose of saving life or property; that the carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the goods, and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to tranship the goods to their destination by any other steamship.

It is also mutually agreed, that the Carrier shall not be liable for loss or damage occasioned by causes beyond his control, by the perils of the sea or other waters, by fire from any cause wheresoever occurring; by barratry of the master or crew, by enemies, pirates, or robbers, by arrest and restraint of princes, rulers or people, riots, strikes, or stoppage of labor; by explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery, or appurtenances, by collisions, stranding, or other accidents of navigation of whatsoever kind (even when occasioned by the negligence, default or error in judgment of the pilot, master, marines, or other servants of the ship owner, not resulting, however, in any case from want of due diligence by the owners of the ship or any of them or by the Ship's Husband or Manager); nor for heating, decay, putrefication, rust, sweat, change of character, drainage, leakage, breakage, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor [fol. 296] for risk of craft, hulk, or transshipment; nor for any loss or damage caused by the prolongation of the voyage.

1. It is also mutually agreed that the carrier shall not be liable for Gold, Silver, Bullion, Specie, Documents, Jewelry, Pictures, Embroideries, Works of Art, Silks, Furs, China, Porcelain, Watches, Clocks or for goods of any description which are above the value of \$500 per package, unless bills of Lading are signed therefor, with the value therein expressed, and a special agreement is made.

2. Also, that shippers shall be liable for any loss or damage to ship or cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, whether such Shipper be Principal or Agent, and such goods may be thrown overboard or destroyed at any time without compensation.

3. Also, that the Carrier shall have a lien on the goods for all fines or damages which the ship or cargo may incur or suffer by reason

of the incorrect or insufficient marking of packages or description of their contents.

4. Also, that in case the Ship shall be prevented from reaching her destination by Quarantine, the Carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

5. Also, that if the goods be not taken by the Consignee within such time as is provided by the regulations of the port of discharge, they may be stored, by the Carrier at the expense and risk of their owners.

6. Also, that full freight is payable on damaged goods but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

7. Also, that if on a sale of the goods at destination for freight and [fol. 297] charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the shipper.

8. Also, that in the event of claims for short delivery when the Ship reaches her destination, the price shall be the market price at the port of destination on the day of the Ship's entry at the Custom House, less all charges saved.

And finally, in accepting this Bill of Lading, the Shipper, the Owner, and Consignee of the goods and the holder of the Bill of Lading, agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder.

In witness whereof, the Master or Agent of the said Ship hath affirmed to (3) three Bills of Lading all of this tenor and date, numbered consecutively, one of which being accomplished, the others to stand void.

It is also mutually agreed, that this shipment is subject to all terms and provisions of, and to all the exemptions from liability contained in the Act of Congress of the United States relating to navigation, &c., approved on the 13th day of February, 1893.

Dated in New York this 13th day of October, 1915.

20 hours consumed in loading entire cargo.

Thos. E. Clinch, Master.

[fol. 298]

Marine Extended Protest

Ship, Llama; Master, Thomas Edward Clinch

American Consular Service

Port of Dundee, Scotland, November 13, 1915.

By this public instrument of declaration and protest be it known and made manifest unto all to whom these presents shall come or may concern, that on the— day of —, one thousand nine hundred and fifteen, before me, E. Haldeman Dennison, American Consul for Dundee, Scotland, and the dependencies thereof, personally came and appeared Thomas Edward Clinch, Master of the ship or vessel called the Llama, of Bayonne, New Jersey, of the burden of 2011 tons or thereabouts, then lying in this port of —, laden with gas oil cargo, who duly noted and entered with me, the said Consul, his protest, for the uses and purposes hereafter mentioned; and now, on this day, to wit, the day of the date hereof, before me, the said Consul, again comes the said Thomas Edward Clinch, and requires me to extend this protest; and together with the said Thomas Edward Clinch also comes John Caldwell, 1st assistant engineer, Carpenter, — — — and — — —, Seamen, of and belonging to the said ship, all of whom, being by me duly sworn on the Holy Evangelists of Almighty God, did severally voluntarily, freely, and solemnly declare, depose, and state as follows, that is to say: That these appearers, on the 13th day of October, 1915, in their capacities aforesaid, sailed in and with the said Llama from the port of New York, U. S. A., laden with gas oil, and bound to the port of Copenhagen, Denmark, via Kirkwall, Scotland; that the said ship was then tight, staunch, and strong; had her cargo well and sufficiently stowed and secured; had her hatches well secured; was well and sufficiently [fol. 299] manned, victualed, and furnished with all things needful and necessary for a vessel in the merchant service, and particularly for the voyage she was about to undertake; that* the said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles westward of the Orkney Islands, when she was boarded by a British Naval Prize Crew on the morning of October 29th, Noup Head of Westray was made about 4 miles to northeast about 8 p. m. on the evening of the 30th the master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 a. m. the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the firth. The vessel was holding a course south magnetic which was considered safe by the master and by the naval officer in charge of the prize crew. The vessel was proceeding at full speed 8 Knots. When about half a

*Here insert narrative of the facts of the voyage as they occurred, with full and minute particulars, with dates, latitude, longitude, etc.

mile south-west of the Skerries which lie off- Berst Ness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result; that the vessel was assisted by two British torpedo boats about 11-30 a. m. one of the wire hawsers broke and fouled the propeller. This rendered the engines of the vessel useless about 1 p. m. The vessel was swung completely round with the rock as a pivot under the forepart of the vessel. In the master's opinion the vessel was badly holed under all part forwards of amidships. The vessel remained fast; that the loss of the ship is estimated by the master at unknown pounds sterling and on the said cargo at unknown pounds sterling and that the ship was not insured except insurance against [fol. 300] war risk, the cargo in unknown pounds sterling and the freight in unknown pounds sterling; that in consequence of the stranding of the said ship no lives were lost, all, namely, master, 36 crew and no passengers being saved by an Admiralty tug and subsisted on board that vessel from the vessel to Kirkwall; that the following provisions valued at unknown were transferred from the wreck to the salving vessel—crews effects only; that in the master's opinion the cause of the casualty was a submerged and uncharted rock and could not have been avoided; that on Sunday, October 31st, when it was seen that there was no likelihood of the ship being got off, the crew under the charge of the chief officer and 3rd assistant engineer were sent ashore about 3-30 p. m. The rest of the officers remaining on board the Admiralty tug, the fires in the main boilers of the vessel having previously been drawn. This course was deemed necessary on account of the heavy laboring of the ship and the danger of gas explosion from oil. On Monday, November 1st, the weather being fine and water calm, attempts were made to lighten the vessel by pumping all cargo so as to enable her to float over the top of the rock, and for this purpose the donkey boiler fire was lighted about 11 or 12. About 2-30 it was discovered that there was a heavy leak of oil in the fire room from No. 7 tank, in consequence of which the fires were drawn. The crew who had been recalled to the ship were ordered to leave her to return to Kirkwall, the chief officer standing by in an Admiralty boat. On Tuesday morning, November 2nd, it was decided that the crew were of no longer of use to the ship, and it was resolved to send them home. Accordingly 27 of the crew with the 3rd officer and 3rd engineer having been paid off, in presence of the American Consular Agent At Kirkwall were sent to Aberdeen with a view of being sent back to the United States. The cook, a Dane, was at his own request returned to Denmark on a diverted ship then lying at Kirkwall. Between 7 and 8 p. m. that evening it was reported that the conditions of the ship [fol. 301] were getting worse and the Admiralty, in consequence ordered the remaining members of the crew to leave the islands. The master and 1st assistant engineer being allowed to remain to look after the ship's interests. The chief engineer, chief officer, second officer, second assistant engineer and wireless operator, having been paid a certain sum to account of what was due them, were sent to Dundee with a view to their transportation to the United States,

leaving on Thursday morning, November 4th at 8 o'clock. All subsequent attempts at salvage proved unsuccessful. In consequence of heavy gales which continued from November 5th till November 9th when, the weather moderating the master proceeded to make an inspection of the ship and found nothing remaining except about 40 ft. of the fore-mast which was helling over at an angle of 45 degrees. Returning to Kirkwall, the master reported to the American Consular Agent that the vessel was a total loss, ship and cargo, and that he had abandoned her and notified the owners and agents to the same effect.

And these said appearers, upon their oaths aforesaid, do further declare and say: That during the said voyage they, together with the others of the said ship's company, used their utmost endeavors to preserve the said Llama and cargo from all manner of loss, damage, or injury. Wherefore the said Thomas Edward Clinch, Master, hath protested, as by these presents I, the said Consul, at his special instance and request, do publicly and solemnly protest, against all and every person and persons whom it doth or may concern, and against the winds, and waves, and billows of the seas, and against all and every accident, matter, and thing, had and met with as aforesaid, whereby and by reason whereof the said Llama or cargo already has, or hereafter shall appear to have, suffered or sustained damage or injury. And do declare that all losses, damages, costs, charges, and expenses that have happened to the said Llama or cargo, or to either, are and ought to be borne by those to whom the same by [fol. 302] right may appertain by way of average or otherwise, the same having occurred as before mentioned, and not by or through the insufficiency of the said Llama, her tackle or apparel, or default or neglect of this appearer, his officers, or any of his mariners.

This done and protested in the port of Dundee, Scotland, this 13th day of November, in the year of our Lord one thousand nine hundred and fifteen.

In testimony whereof, these appearers have hereunto subscribed their names, and I, the said Consul have granted to the said Master this public instrument, under my hand and the seal of this Consulate, to serve and to avail him, and all others whom it doth or may concern, as need and occasion may require.

E. H. Dennison, Consul of the United States. (Seal.)

Tariff Fee No. 25. No fee charged. Service No. 132. Thomas Edward Clinch, Master. John Caldwell, 1st Asst. Engr.

UNITED STATES OF AMERICA,

State of New York,

County of New York, ss:

Christian Peter Jensen, being duly sworn, says:

1. At the present time I am second officer of the steamship El Paso of the Southern Pacific Company. At the time of the loss of the steamship Llama I was third officer on board her. I have been going to sea since the year 1906 and hold a Second Officer's Certifi-

cate from the New York Board of Steamship Inspectors. I was born in Denmark and am a naturalized American citizen.

[fol. 303] 2. I joined the Llama shortly before she sailed from New York on the trip on which she was lost.

3. On October 22, 1915, when we were about 400 miles to the westward of Orkney Island, Scotland, we were boarded by a British Naval Lieutenant and Prize Crew who took charge of the steamer and, thereafter, all courses and manœuvres were under the direction of the Prize Officer.

4. My watch was from 8 to 12 a. m. and from 8 to 12 p. m. I remember that on the evening of October 30, 1915, land was sighted shortly before I came on watch. We did not attempt to go into Kirkwall that night but lay off intending to go in the next morning.

5. I came on watch the next morning, October 31, at 8 a. m. and shortly thereafter the Prize Officer started the ship in to Westray Firth. When we started in the British Prize Officer, the Captain and I were on the bridge and there was a man at the wheel.

6. I took the time and I remember that it was about ten minutes after I came on watch that Noup Head, which I understand was the land we first sighted, was abeam and about 2 to 2½ miles distant. At that time we were steering S. ½ W. by Standard Compass and continued steering on that course until about 8:25. The Captain and Prize Officer, who had left the bridge to get some breakfast, returned about this time and went into the chart house, which was just back of the bridge.

7. At about 8:40 the Prize Officer noticed a headland which he pointed out to the helmsman and ordered him to steer for it. When our course was set so as to head us toward this headland we were on a course by the Standard Compass of Southeast.

8. Subsequently, the Prize Officer and Captain went into the chart room again and when they came out changed the course to S. by E. ¾ E. The course was altered accordingly and we kept on this course until the Llama struck.

[fol. 304] 9. We went on the course S. by E. ¾ E. at about 8:53. About this time the Captain went into the chart house and the Prize Officer remained on the bridge. A few minutes later, and about five minutes before the ship stranded, I saw breakers on the port bow. I looked at them through my glasses and assured myself that they were breakers and that it was shoal water in that direction. There was not any sign of breakers ahead. I should say that if we had gone on we would have passed these breakers about one-half mile off on the port side.

10. When I saw the breakers I called the attention of the Prize Officer to them and I said to him: "Holy gee! There are shoals there. We are pretty close into them, aren't we?" I also asked him the name of the shoal. He replied that he was not sure of the

name, but he mentioned several names that it might be. Then I said to him: "We are going pretty close into them, aren't we?" He said: "No, that is all right."

11. The reason that I called the Naval Officer's attention to the breakers was that he was on the bridge and I knew that he was in charge of the ship and responsible for the courses we were steering and, therefore, I wanted to be assured by him that the course we were on was a safe course. He was supposed to know the waters and we did not have any pilot except him to take us in.

12. In view of his assurance to me I did not think it necessary to haul off or report the matter to the Captain. We continued on the course, and about five minutes afterwards the Llama struck.

13. The time entered in the log book for the stranding is 9:07, but, as I recollect it, it was about 9:10. The bow of the steamer rose considerably and at first I thought we had struck a mine. The Captain rushed out of the pilot house and said: "It is a mine." The Prize Officer who was standing there also thought that it might be a mine. There were not any breakers at the place where the [fol. 305] Llama struck, but soundings taken after she had been stranded for about two hours indicated that she was on the edge of the Skea Skerries.

14. I remained by the ship until 4 o'clock in the afternoon, when I went to Kirkwall. I returned the next day and left again that evening for Kirkwall. On the following day, November 2, I was sent home to the United States.

15. The Llama was going at full speed when she struck.

Christian Peter Jensen.

Sworn to before me, this 25th day of May, 1917. Goulding
K. Wight, Notary Public, New York County, No. 316.
(Seal.)

United States District Court. Steamship Llama. Total Loss.
Copy. Affidavit of Christian Peter Jensen. Kirlin, Woolsey &
Hickox, Proctors for —, 27 William Street, New York, N. Y.

[fol. 306] In the Matter of the Claim of THE STANDARD OIL COMPANY (OF NEW JERSEY) for the Total Loss of the Steamship Llama, Her Cargo and Freight, under Policy Number 1269.

Second Affidavit of David T. Warden on Claim for Total Loss of Freight on S/S Llama

STATE OF NEW YORK,
County of New York, ss:

David T. Warden, being duly sworn, says:

1. I am manager of the Foreign Shipping Department of the Standard Oil Company, a Corporation of the State of New Jersey, hereinafter called the Standard Oil Company, and as such I have under my control and management steamships owned by that company.

2. On December 30, 1916, I verified an affidavit in this claim in which the details of the claim were fully set forth. I hereby refer to that affidavit and incorporate it as a part of this affidavit as if it were herein again fully set forth.

3. Under date of January 24, 1917, a request was made by the Director of the War Risk Bureau of the Treasury Department for the submission of certain additional information and documents, and in pursuance thereof this affidavit is made and the documents accompanying this and my affidavit of even date in respect of Policy Number 1263 are submitted to the Department.

4. I submit herewith the master's, or deck, log book, the chief engineer's log book and the scrap log book of the steamship Llama covering the voyage in question on which she was lost, and I respectfully ask that these log books be considered as submitted both in the claim under Policy Number 1269 and in the claim under Policy Number 1263.

[fol. 307] 5. I annex hereto as Schedule A a sworn statement of the third officer, Christian Peter Jensen, verified May 25, 1917, as the occurrence leading up to the stranding and loss of the steamship Llama.

6. I annex hereto as Schedule B copy of a letter dated October 8, 1915, addressed to Captain Clinch of the steamship Llama from my office, the original of which was signed in my behalf, instructing him as to coaling, cabling, stores, provisions, insurance, future movements and preparing the steamship Llama for cargo on her next return to the United States.

7. I annex hereto as Schedule C copy of a letter dated October 8, 1915, addressed to Captain Clinch of the steamship Llama from my

office, dealing with steamer routes. The two letters, copies of which are hereto annexed, are all the sailing orders which the Captain of the steamship Llama received.

8. In the copy of letter, marked Schedule C, dealing with steamer routes, I instructed the Captain to make a voluntary call at Kirkwall.

This instruction as well as the provisions of the vessel's documents that she should proceed to Copenhagen via Kirkwall was arranged not as a voluntary matter so far as the Standard Oil Company was concerned, but was an expedient adopted in agreement with the British Authorities with the view of minimizing the very great delays that had previously occurred in connection with the uniform seizure of all our vessels bound to Scandinavian ports at remote distances from Kirkwall and the takings of the ships into that port for examination in charge of prize crews.

9. We had a great deal of correspondence with regard to the seizure and long detention of other vessels of our Company, which had been on this route, with our representatives in London, Messrs. Piesse & Sons. I annex hereto, as Schedule D hereof, copy of a letter dated [fol. 308] January 30, 1915, to Piesse & Sons; as Schedule E hereof, copy of a letter to me from Piesse & Sons dated February 9, 1915; as Schedule F hereof, copy of a letter from Piesse & Sons to me dated February 19, 1915; as Schedule G hereof, copy of a letter from me to Piesse & Sons, dated February 23, 1915, and as Schedule H hereof, copy of a letter from Piesse & Sons, dated March 19, 1915, acknowledging my letter dated February 23, 1915.

10. As a result of this correspondence and subsequent negotiations with the British Ambassador here, had through our counsel, it was provided that, in order to satisfy the British Authorities, our vessels when going to Scandinavian ports should be documented via Kirkwall under pain of indefinite detention if they were not so documented. Prior to this arrangement our vessels had been detained for periods of ten days to three weeks, and it was expected that action under it would reduce the delays to a very few days.

11. The object of going to Kirkwall was that the British Authorities might search the vessel easily and satisfy themselves of the neutral destination of the cargo and the propriety of the vessel's papers. It was not in any sense a voluntary call, such as would have been the case if, in normal times, the vessel had been documented as she was on this occasion.

In normal times, if she had been proceeding from New York to Copenhagen, or other Scandinavian ports, there would not have been any provision for a call at Kirkwall.

12. The steamship Llama was actually seized by the British Authorities and taken into Kirkwall, in spite of the fact that the Captain was instructed to go there, and it was while she was in the possession, under the control, and being navigated by the British Prize Officer on courses prescribed by him that she struck the rocks on which she was lost.

[fol. 309] 13. It was the custom of the British war vessels which were watching for vessels northward of Scotland to put prize crews on board any vessel which they encountered, because the prize crew had the latest information with regard to mine fields and the Government preferred to take vessels into Kirkwall in its own way rather than leave it to the masters to navigate them on their own responsibility. If the steamship Llama had not encountered a British Naval Officer she would have proceeded to Kirkwall through different passage from that actually followed by the prize crew. But inasmuch as she was met and seized by a war vessel it was the normal procedure to have a prize crew put on board to take her in upon the courses, by the route and in the manner directed by the Prize Officer.

14. The reason for the delay in filing this affidavit has been that we were not able to locate Mr. Jensen, the third officer, to secure his affidavit, which is submitted herewith, until May 25, 1917. And inasmuch as the correspondence with Piesse & Sons was not written in connection with the steamship Llama case it took us a great deal of time and effort to find the letters. The pressure of other work has also contributed to the delay, otherwise this affidavit would have been submitted earlier in the summer.

15. It is respectfully submitted, therefore, that the Standard Oil Company of New Jersey is entitled to a full recovery under Policy Number 1269.

David T. Warden.

Sworn to before me, this 27th day of September, 1917. D. J. Daverin, Notary Public, Westchester County. (Seal.)
Certificate filed in New York County. County Clerk's
No. 147. Register's No. 9112.

[fol. 310] UNITED STATES OF AMERICA,
State of New York,
County of New York, ss:

Christian Peter Jensen, being duly sworn, says:

1. At the present time I am second officer of the steamship El Paso of the Southern Pacific Company. At the time of the loss of the steamship Llama I was third officer on board her. I have been going to sea since the year 1906 and hold a Second Officer's Certificate from the New York Board of Steamboat Inspectors. I was born in Denmark and am a naturalized American citizen.

2. I joined the Llama shortly before she sailed from New York on the trip on which she was lost.

3. On October 22, 1915, when we were about 400 miles to the westward of Orkney Islands, Scotland, we were boarded by a British Naval Lieutenant and Prize Crew who took charge of the steamer and, thereafter, all courses and manœuvres were under the direction of the Prize Officer.

4. My watch was from 8 to 12 a. m. and from 8 to 12 p. m. I remember that on the evening of October 30, 1915, land was sighted shortly before I came on watch. We did not attempt to go into Kirkwall that night but lay off intending to go in the next morning.

5. I came on watch the next morning, October 31, at 8 a. m. and shortly thereafter the Prize Officer started the ship in to Westray Firth. When we started in the British Prize Officer, the Captain and I were on the bridge and there was a man at the wheel.

6. I took the time and I remember that it was about ten minutes after I came on watch that Noup Head, which I understand was the land we first sighted, was abeam and about 2 to 2½ miles distant. At that time we were steering S. ½ W. by Standard Compass and continued steering on that course until about 8:25. The Captain and Prize Officer, who had left the bridge to get some breakfast, re-[fol. 311] turned about this time and went into the chart house, which was just back of the bridge.

7. At about 8:40 the Prize Officer noticed a headland which he pointed out to the helmsman and ordered him to steer for it. When our course was set so as to head us towards this headland we were on a course by the Standard Compass of Southeast.

8. Subsequently, the Prize Officer and Captain went into the chart room again and when they came out changed the course to S. by E. ¾ E. The course was altered accordingly and we kept on this course until the Llama struck.

9. We went on the course S. by E. ¾ E. at about 8:53. About this time the Captain went into the chart house and the Prize Officer remained on the bridge. A few minutes later, and about five minutes before the ship stranded, I saw breakers on the port bow. I looked at them through my glasses and assured myself that they were breakers and that it was shoal water in that direction. There was not any sign of breakers ahead. I should say that if we had gone on we would have passed these breakers about one-half mile off on the port side.

10. When I saw the breakers I called the attention of the Prize Officer to them and I said to him: "Holy gee! There are shoals there. We are pretty close in to them, aren't we?" I also asked him the name of the shoal. He replied that he was not sure of the name, but he mentioned several names that it might be. Then I said to him: "We are going pretty close into them, aren't we?" He said: "No, that is all right."

11. The reason that I called the Naval Officer's attention to the breakers was that he was on the bridge and I knew that he was in charge of the ship and responsible for the courses we were steering and, therefore, I wanted to be assured by him that the course we were on was a safe course. He was supposed to know the waters and we did not have any pilot except him to take us in.

[fol. 312] 12. In view of his assurance to me I did not think it necessary to haul off or report the matter to the Captain. We continued on the course, and about five minutes afterwards the Llama struck.

13. The time entered in the log book for the stranding is 9:07, but, as I recollect it, it was about 9:10. The bow of the steamer rose considerably and at first I thought we had struck a mine. The Captain rushed out of the pilot house and said: "It is a mine." The Prize Officer who was standing there also thought it might be a mine. There were not any breakers at the place where the Llama struck, but soundings taken after she had been stranded for about two hours indicated that she was on the edge of the Skea Skerries.

14. I remained by the ship until 4 o'clock in the afternoon, when I went to Kirkwall. I returned the next day and left again that evening for Kirkwall. On the following day, November 2, I was sent home to the United States.

15. The Llama was going at full speed when she struck.

Christian Peter Jensen.

Sworn to before me, this 25th day of May, 1917. Goulding K. Wight, Notary Public, New York County, No. 316.
(Seal.)

[fol. 313]

New York, Oct. 8, 1915.

Captain Thomas E. Clinch, American S. S. "Llama," New York.

DEAR SIR: The Cargo which your steamer will load at New York, namely, a full cargo of Gas Oil in bulk, is to be delivered to Det Danske Petroleums Aktieselskab, Copenhagen.

The consignees of your vessel's cargo will advise you upon arrival at Copenhagen in regard to your agents; they will also arrange for the payment of your steamer's disbursements.

Coaling: You will please leave New York with all the coal it is possible for your steamer to carry, consistent with her proper trim, draft and safety.

With reference to coaling abroad, we have recently arranged, through the Anglo-American Oil Company, Ltd., London, for the Copenhagen Bunkers Coal Depot to supply our steamers with their coal requirements at Copenhagen for the balance of the year.

We are advising the suppliers that your steamer will require about 500 to 600 tons of Coal for the return voyage.

The price of the coal is 41/-per ton, free on board, ex. Depot.

We are requesting Det Danske Petroleum Aktieselskab to pay for the quantity of coal taken by your steamer against your receipt.

Freight: The freight on your vessel's cargo will be adjusted through this office.

Cabling: Det Danske Petroleum Aktieselskab will cable me your arrival at and departure from Copenhagen. Please be sure to give

[fol. 314] them the quantity of coal remaining on board on your arrival at and departure from that port, in order that they may include this information in their cables to us; also be sure to enquire whether these cables have been dispatched.

Stores, Provisions, etc.: Your steamer will be supplied at New York with a complete outfit of Stores, Provisions, etc., for the voyage; it should, therefore, not be necessary for you to purchase abroad any provisions other than fresh meat and vegetables for port use and sea stock.

Insurance: Your steamer and freight have been insured against war risk with the U. S. Bureau of War Risk Insurance, but there is no ordinary marine insurance on this vessel.

Future Movements: It is the present intention to have your steamer return to the United States in ballast after discharge at Copenhagen; we will, however, endeavor to give you definite instructions by cable in this respect if it is possible to communicate with you. In the absence of any instructions to the contrary, please return to New York and report your position to me by wireless as soon as you can get into communication with this coast. Please keep a lookout for wireless messages from me when approaching this coast, in case we may desire you to load your next cargo at some other port than New York.

When reporting your position to me by wireless on your return voyage please state in your message if there are any repairs that will require the use of fires, and whether your steamer is in position to commence loading promptly on arrival.

Your vessel's pipe lines and valves should all be tested before your arrival here, in order that you may know whether they are tight and thus avoid delay after the vessel goes into berth.

Preparing Steamer for Cargo: On your return voyage (if the weather permits) you should steam out all tanks, giving particular [fol. 315] attention to those which have contained nap-tha, and be sure that they are free from gas.

After the tanks have been steamed and you are satisfied that they contain no gas, such of the tanks as it is not necessary to keep ballast in should be washed out and dried, so that some of the tanks will be ready for loading on arrival.

Please give this matter your particular attention, and have your steamer ready for cargo as far as possible when you arrive in port.

Wishing you a safe and speedy voyage, I remain,

Yours very truly, David T. Warden. GHH/L. D.

P. S.—In addition to the bulk cargo, the S. S. "Llama" is to load 300 barrels of Mineral Colza Oil and 30 barrels of Dry Glue, consigned to Det Danske Petroleum Aktieselskab, for discharge at Copenhagen.

I may mention that the glue is intended for gluing the insides of barrels.

D. T. W. David T. Warden.

(Rubber stamped:) Copy. S. O. Co.

[fol. 316]

New York, October 8, 1915.

Captain Thomas E. Clinch, S. S. "Llama," New York.

Steamer Routes

DEAR SIR: On your coming voyage you will please make a voluntary call at Kirkwall before proceeding to Copenhagen, the same as you did on your last voyage to Scandinavia, in order to give the British authorities an opportunity to examine your steamer's cargo and documents, and we trust that you will not suffer any detention at Kirkwall.

Please telegraph your arrival at and departure from Kirkwall to me and to Messrs. Piesse & Sons, 15 Old Jewry Chambers, London E. C. If you have any small expenses at Kirkwall for provisions, etc., and have not sufficient money to pay for same, you may draw for the amount of your disbursements on Messrs. Piesse & Sons, advising them by telegraph the amount of your draft.

When leaving Kirkwall, we think it advisable for you to proceed straight across the North Sea until you make the Norwegian Coast, then follow that coast until you reach the Lindesnas (Naze Light-house) when the regular course can thereafter be followed.

We understand that all lights on the Swedish Coast are still extinguished; consequently it is very important that you take every precaution in navigating the Kattegat.

I attach hereto, for your information, copy of a decree issued by the Swedish Government concerning special safety measures to be observed in navigating certain waters, to which please give your attention.

Yours very truly, D. T. Warden. GHH/L. (D.)

[fol. 317]

New York, January 30th, 1915.

Messrs. Piesse & Sons, 15 Old Jewry Chambers, London, E. C.

S. S. "Pioneer"

GENTLEMEN: The American tank steamer "Pioneer" (formerly the German S. S. "Kiowa"), belonging to us, is expected to leave New York tomorrow with a cargo of Refined Petroleum (Illuminating Oil) for Copenhagen, Denmark, and Gothenburg, Sweden.

The Captain has been instructed to take the route north of Scotland and pass between the Orkney and Shetland Islands.

We have told Captain Harry S. Morris, who is in command of this steamer, that in the event of his obtaining any information during the course of the voyage which would make him consider that a continuation of the voyage would be attended with great hazard, he is to put in at a convenient English or Scottish port and report his arrival there to you, giving you full particulars of the information he has obtained.

I enclose herewith copy of a letter which I have written to Captain Morris in this connection.

Should you hear from Captain Morris, will you be good enough to telegraph me the circumstances as fully as possible, in order that we may have an opportunity of going into the matter and be in a position to give you further instructions regarding the movements of this steamer.

I may mention that the Gothenburg portion of this steamer's cargo is for delivery to the Vestkustens Petroleums Aktiebolag, while the cargo for Copenhagen is to be delivered to Det Danske Petroleums Aktieselskab.

The cargo has been loaded under the supervision of a Customs inspector and an affidavit obtained from him to this effect. The [fol. 318] manifest has also been vised by the British and French Consuls. Certificates have been obtained from the Swedish and Danish Consuls in which it is stated that the exportation of Petroleum is prohibited from their respective countries. These certificates are on board.

Yours very truly, D. T. Warden. RFH/L.

Piesse & Sons

15 Old Jewry Chambers,
London, E. C., Feb. 9th, 1915.

DEAR SIR: We have a communication from the Foreign Office here requesting us to furnish them with a complete list of the vessels in which the Standard Oil Company are interested which have been transferred from an Enemy to a Neutral flag since the outbreak of the present European war. We immediately attended at the Foreign Office and enquired as to the connection in which they require this information and were informed that the Admiralty had asked for it. We then attended at the Admiralty and made the same enquiry of them and they informed us that they required the information for the purpose of issuing instructions to the British fleet that the transfer of these vessels from an enemy to a neutral flag had been recognized, so that in future these vessels would not be detained for the purpose of investigation as has happened in the past.

We received yours of the 29th ulto. yesterday morning respecting the S. S. "Polarine" informing us that this vessel would shortly be leaving Philadelphia for Rotterdam and describing the course she would be taking and that you had requested the Captain to immediately report to us if at any time on the voyage he was detained. [fol. 319] While at the Admiralty yesterday we brought this matter up and gave them full particulars as far as we could of this vessel's departure from Philadelphia and the route she would be taking and as to her cargo and port of destination, and we were able to obtain from them a statement that they would immediately particularly instruct the British fleet to the effect they had full particulars of this vessel and she should be allowed to proceed to Rotterdam with as little delay as possible.

In these circumstances we cabled you to-day as follows:

"Send us by next mail complete list of all vessels which have been transferred from enemy to American flag and now owned by your Company giving former and present name. British Admiralty ask for this in connection with issuing instructions to fleet that British Government have recognized transfer and in order to prevent unnecessary delay of these vessels in future. Have given Admiralty all particulars respecting voyage cargo and destination cargo of Polarine Philadelphia Rotterdam and have arranged for them issue instructions to fleet to allow her to proceed on voyage without delay. Piesse."

which we now confirm.

We have also arranged with the Admiralty that in all future cases, if we would before hand give them all particulars of any vessel belonging to your Company with an approximate date of its arrival in the channel they would issue orders to the fleet to let her proceed to her destination with as little delay as possible, and therefore if you will bear this in mind and let us have this information we will in each case go to the Admiralty and make the necessary arrangements accordingly.

We think by doing this we may be able to save a great deal of delay to all your vessels and shall be pleased to receive any instructions from you at any time and they shall be promptly carried out. [fol. 320] You will of course immediately acquaint us from time to time in the event of any vessel of enemy nationality being transferred to your Company and the American flag, so that we may keep the list to be supplied to the Admiralty complete and up to date at all times.

Yours faithfully, (Sgd.) Piesse & Sons.

D. T. Warden, Esqre., Standard Oil Company, Shipping Department, 26 Broadway, New York, N. Y., U. S. A.

Piesse & Sons

15 Old Jewry Chambers,
London, E. C., February 19, 1915.

DEAR SIR:

S. S. "Pioneer"

We received your letter of the 30th ulto. on the 15th inst. and immediately gave all the necessary particulars to the Admiralty concerning this vessel, but as all vessels on the north of Scotland route are taken into Kirkwall by the British Fleet for examination, unless they have already obtained permission to pass along this route, we expected that this vessel would be taken in. Yesterday evening we received a telegram from Captain Morris stating that he was detained at Kirkwall. We immediately went to the Admiralty and as

we had already given them the full particulars well ahead, the vessel was released the same day and no doubt she left Kirkwall this morning.

[fol. 321] We cabled you to-day as follows:

"Pioneer detained Kirkwall yesterday released to-day. In future "instruct all vessels passing north Scotland to call voluntarily and "report at Kirkwall otherwise taken there and delayed."

this we confirm.

In future we suggest that you should follow the same course as you have done in this case, that is to say: write us well ahead giving us full particulars of the vessel's departure, cargo destination, consignees etc. and we will then go to the Admiralty and obtain the necessary permission for the vessel to pass on this course, but in all instances the vessel must call off Kirkwall and report herself and she will then probably be allowed to proceed without delay. Unless she does this she will be taken into Kirkwall and may be unnecessarily delayed.

Yours faithfully, (Sgd.) Piesse & Sons. D.

D. T. Warden, Esqre., Standard Oil Company, Foreign Shipping Dept., 26 Broadway, New York, N. Y., U. S. A.

(Rubber Stamped:) Copy. S. O. Co.

[fol. 322]

(File 825)

New York, N. Y., Feb. 23, 1915.

Messrs. Piesse & Sons, 15 Old Jewry Chambers, London, E. C.

GENTLEMEN: With reference to the suggestion in your telegram of the 19th instant that in the future we should instruct all of our vessels taking the north of Scotland route to call voluntarily and report at Kirkwall, otherwise that they would be taken there and delayed:

We saw this suggestion made in newspaper reports some time ago, but it was our feeling that it would not be wise for us to act in accordance therewith, for two reasons:

1. We would be in the position of voluntarily sending our neutral steamers, bound to neutral ports, into belligerent territory, the wisdom of which course we are inclined to seriously question.

2. We know of no reason for detaining these neutral steamers and cargoes. So far as the transfer of the flag is concerned, Great Britain and France have both had several of our steamers in their custody, and have taken no exception to the transfer.

Our steamers are being loaded under the supervision of the United States Customs authorities, who certify the manifest to be correct. Besides this, the manifest is vised, whenever we can get it done, by the British, and, where necessary, the French Consul.

The steamers also take forward declarations issued by the Consul of the country of destination—that is, Norway or Sweden—that the exportation of oil from these countries is prohibited.

Our steamers further take forward affidavits by the suppliers of the cargoes declaring exactly what the cargoes consist of.

[fol. 323] In going to all this trouble and expense in order to satisfy the officers of any war vessels boarding the ships, and hoping that the British authorities are now satisfied that the destination of our ships and their cargoes are correctly shown and bona fide in every way, we feel that we should not consistently be asked to stop in at Kirkwall, or any other port, which naturally means detention and extra expenses, to say nothing of the danger involved.

It is our understanding that the waters around the Orkney Islands are mined, and therefore dangerous, and that we are running a very great risk in sending our steamers into these waters. It is our sincere desire to keep our steamers as far as possible out of the danger zone, and we are very desirous of sending them by the open route north of the Shetland Islands when bound to Scandinavian ports, where, I believe, the risk of danger from mines can be very greatly minimized, if not altogether avoided.

Our steamers are insured against war risk by the United States Government Bureau established for this purpose, but we have no desire to collect war risk insurance on these steamers; on the contrary, our wish as above indicated is to do everything possible to keep them out of the zone of danger.

Upon a full review of your question, we feel that the British Government should not ask us to put our ships, with their neutral cargoes, voluntarily into their custody, but what they should, themselves, assume the responsibility for any action they may see fit to take towards compelling the ships to deviate from their voyage and enter belligerent ports, necessitating expense and detention to us.

We have given you this somewhat full explanation of our position for your own information and are assuming that it may not be necessary for you to report same to the British authorities.

Yours very truly, David T. Warden. DTW/L. (D.)

[fol. 324]

15 Old Jewry Chambers,
London, E. C., March 19, 1915.

DEAR SIR:

North of Scotland Route

Referring to your letter of the 23rd ulto, we have duly noted contents but somewhat doubt the advisability of sending your vessels north of the Shetland Islands on the assumption that the risk of danger from mines will be minimized if not altogether avoided. In the first place on going north of the Shetlands the vessels are a long way out of their course and we think it will result in their being brought into Kirkwall all the same. However you will act as you think best and must take this suggestion for what it is worth.

Yours Faithfully, Piesse & Sons. D.

D. T. Warden, Esqre., Standard Oil Company, Foreign Shipping
Dept., 26 Broadway, New York, N. Y., U. S. A.

[fol. 325] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 9

The United States of America,

Department of Commerce,

Bureau of Navigation

Bill of Sale of Registered Vessel

(Secs. 4170, 4171, 4192, 4193, 4194, and 4196, Revised Statutes,
and Arts. 53 and 55, Customs Regulations of 1908.)

To all to whom these presents shall come, Greeting:

Know ye that* Deutsch-Amerikanische Petroleum-Gesellschaft, a German Company Limited, with the seat at Hamburg; Registered Owners of the screw steamer or vessel called the "Brilliant" of the burden of 3189 gross 2011 net tons, or thereabouts, for and in consideration of the sum of Fifty Thousand (\$50,000.00) dollars, lawful money of the United States of America, to us in hand paid, before the sealing and delivery of these presents, by† Standard Oil Company, a corporation of the State of New Jersey, the receipt whereof we do hereby acknowledge and are therewith fully satisfied, contended, and paid, have bargained and sold, and by these presents do bargain and sell, unto the said† Standard Oil Company, its successors, and assigns, the whole of the said steamer or vessel, together with all the masts, bowsprit, sails, boats, anchors, cables, tackle, furniture, and all other necessities thereunto appertaining and belonging; the foreign Certificate of Registry of which said steamer or vessel is as follows, viz:

[fol. 326] Form A—Form for Ships with Deck

German Empire

Kind of Ship—Screw Tank Steamer.

Name of Ship—"Brilliant."

Signal Letters—K. R. F. B.

Nationality—German.

Home Port—Hamburg.

*Here insert the names of the vendors, and the part conveyed by each.
†Here insert the names of the vendees, and the part conveyed to each.

Letter of Ship's Measurement

Description of Ship

Name of Builder—Sir W. G. Armstrong, Mitchell & Co.

Year of Construction—1890.

Town of Construction—Newcastle on Tyne.

Material—Steel.

Construction—Partly Double Bottom Plates lapped.

Number of Decks—Two.

Kind of Upper Deck—Shelter.

Number of Watertight Bulkheads Under and Over Measurement Deck—12.

Number of Water Ballast Compartments with Cargo Hatches: —.

Kind of Ceiling: —.

Shape of Bow—Straight.

Shape of Stern—Elliptical.

Number of Smokestacks—1.

Number of Masts—3.

Rig—Schooner.

Measures of Identity

1. Length of ship between aft side of stern and aft side of stern frame in ships with patent rudder to centre of rudder on the uppermost solid deck is..... 97.09 M.
 2. Greatest breadth of ship between the outside of the board's ceiling or the walls is..... 12.80 M.
- [fol. 327]
3. The depth of ship's hold between under side of the uppermost solid deck and the upper side of bottom pieces alongside of the keelson or the upper side of the inner iron double bottom if existing in the centre of the length under No. 1 is..... 8.99 M.
 4. The greatest length of the engine room including the permanent coal bunkers which lay between the board to board reaching bulkhead is..... 21.34 M.

Results of Measurement

Gross capacity	C. B. M.	Deductions	C. B. M.
		I. Space for propelling power:	
1. Space under measurement deck	8562.414	1. 32% of gross capacity...	2801.066
2. Space between measurement rack and deck above same.....	.....	2. Engine room after measurement .....	.....
3. Space between first and second deck above measurement deck.....	.....	+ %
4. Quarter deck cabin or poop .....	.....	II. Crew and navigation rooms:	
5. Forecastle	118.480	1. Rooms for sailors, firemen, petty officers, cooks, stewards, etc....	156.298
6. Rooms under bridge deck.	131.690	2. Rooms for officers and engineers, etc.....	123.464
7. Half deck.....	.....	3. Steering rooms, chart rooms, etc.....	10.959
8. Other rooms.....	221.996	4. Sall room.....	.....
9. Contents of hatches to be deducted .....	.....	5. Store room.....	125.076
		III. Room for master....	30.234
Gross capacity.....	9034.580	Total of deductions...	3337.092

	C. B. M.	Reg. tons		C. B. M.	Reg. tons
Gross capacity...	9034.580	3189.207	Result of measurement—		
Deductions	3337.092	1177.993	Gross	9034.6	3189.21
Net capacity.....	5697.488	2011.214	Net	5697.5	2011.21

This letter of ship's measurement has been written out about the — — —. Measuring finished at Hamburg on the 5th of Oct. 1895. Measuring was done by the measuring committee according to the bill of March 1st, 1895.

Hamburg, October 11th, 1895.

Department of Trade and Shipping. First Secretary. (Sgd.) Kircheparer.

[fol. 328]

New York, September 11th, 1914.

I certify this to be a true copy of the Original translated from German.

(Sgd.) Geo. W. Rocklein, Notary Public, Kings County.
Certificate filed in New York County, #30. (Seal.)

German Empire

Ship's Certificate

This is to certify that the undersigned office on the 22nd May, 1906, has entered the Ship "Brilliant" into the official ship's register under the number 3495 as follows:

1. Name of Ship—"Brilliant."
2. Kind—Screw Steamer built of Steel.

3. Signal Letters—K. R. F. B.

4. Result of official measuring—The main measurements after S. 25 Nr. 1 of the ship's measuring bill are:

Length, 97.09 Meter.

Breadth, 12.80 Meter.

Depth, 8.99 Meter.

Greatest length of engine room 21.34 Meter.

The measurement was done after the complete proceeding according to the ship's measurement bill of March 1, 1895 (Imperial Laws 1895, Page 161) and it is:

	Cubic meters	Register, tons
a) Gross Capacity	9034.6	3189.21
b) Net Capacity	5697.5	2011.21

b) Written in full Five thousand six hundred and ninety seven and five tenths Cubic Meters Equal to Two thousand and eleven 21/100 Register Tons.

5. Time and place where built—1890. Low Walker in England.

[fol. 329] 6. Home port—Hamburg.

7. Ownership—Name, designation; No. and Nationality of Owner, 1, The Stock Company Deutsche-Amerikanische Petroleum-Gesellschaft in Hamburg; shares, 1/1; reason for acquisition, built for account of the company.

This certificate is written out about the above entering. In the meantime it is certified that the Ship "Brilliant" according to the law of June 22, 1899 (Imperial Laws, Page 319), is entitled to fly the flag of the empire and is entitled to all rights, qualities and privileges of a German ship.

Hamburg, 22nd May, 1906, the Ships Register Office.

(Sgd.) Siemsen, Dr.

The head office of the Company is changed to Hamburg.

Hamburg, 10th April, 1911, Ship's Register Office.

(Sgd.) Robinow.

New York, September 11th, 1914.

I certify this to be a true copy of the Original translated from German.

(Sgd.) Geo. W. Rocklein, Notary Public, Kings County. Certificate filed in New York County, #30. (Seal.)

[fol. 330] To have and to hold the said Steamer "Brilliant" and appurtenances thereunto belonging unto them the said Standard Oil Company, its successors, and assigns, to the sole and only proper

use, benefit, and behoof of them, the said Standard Oil Company, its successors and assigns forever: And we the said Deutsch-Amerikanische Petroleum-Gesellschaft have promised, covenanted, and agreed, and by these presents do promise, covenant, and agree, for our successors, and assigns, to and with the said Standard Oil Company, its successors, and assigns to warrant and defend the said vessel and all the other before-mentioned appurtenances against all and every person and persons whomsoever.

In testimony whereof, The said Deutsch-Amerikanische Petroleum-Gesellschaft, by Walter C. Teagle, its duly authorized attorney have hereunto set our hand and seal this 11th day of September, in the year of our Lord one thousand nine hundred and fourteen.

Signed, sealed, and delivered in presence of—Deutsch-Amerikanische Petroleum-Gesellschaft.

(Sgd.) F. D. Asche, by Walter C. Teagle, by — — —, Attorney-in-fact. (Seal.)

[fol. 331] *STATE OF NEW YORK,
County of New York, ss:

Be it known, That on this 11th day of September, 1914, personally appeared before me, Walter C. Teagle, Attorney in fact for Deutsch-Amerikanische Petroleum-Gesellschaft and acknowledged the within instrument to be his free act and deed, and the free act and deed of said Company.

In testimony whereof, I have hereunto set my hand and seal this 11th day of September, A. D. 1914.

(Sgd.) M. H. Eames, Notary Public, Kings County. Certificate filed in New York County, certificate No. 9. (Seal.)

BB.

Custom House, Port of New York.

I hereby certify the within to be a true copy of the original Bill of Sale of the steamship "Brilliant" now on file in this office, and the whole thereof, and that the said vessel was registered at this port under the nam "Ilama" on October 8, 1914.

Given under my hand and the seal of the Collector, this twenty-first day of October, 1914.

John Farrell, Acting Deputy Collector.

Fee, 50 cts. JW. JP.

*This acknowledgment may be made to conform to requirements of State laws.

[fol. 332] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 10

No. 6467.

United States of America,
Department of State.

To all whom these presents shall come, Greeting:

I certify That the document hereunto annexed is under the Seal of the Department of Commerce, and that such Seal is entitled to full faith and credit*.

In testimony whereof I, W. J. Bryan, Secretary of State, have hereunto caused the Seal of the Department of State to be affixed and my name subscribed by the Chief Clerk of the said Department, at the City of Washington, this 9th day of March, 1915.

W. J. Bryan, Secretary of State, by Ben G. Davis, Chief Clerk.
(Seal.)

[fol. 333] Department of Commerce,
Bureau of Navigation

Washington, March 8, 1915.

The Commissioner of Navigation, Department of Commerce, United States of America, hereby certifies that the S. S. Llama registered as a vessel of the United States on October 8, 1914, and awarded official number 212682, signal letters L D T K, is, as appears by papers on file with the Bureau of Navigation, Department of Commerce, the property of the Standard Oil Company (New Jersey), a citizen of the United States, and that this Company was the beneficial, actual and entire owner of said vessel prior to May 1, 1914.

Eugene Tyler Chamberlain, Commissioner of Navigation.
(Seal.)

Attest: E. F. Sweet, Assistant Secretary of Commerce. (Seal.)

(*For the contents of the annexed document the department assumes no responsibility.)

[fol. 334] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 11

Department of Commerce

Certificate of Ownership of Vessel

Collector's Office, Customhouse

New York, N. Y., January 31, 1921.

I hereby certify that, according to the records of this office, the Steamship called the Llama, of New York, N. Y., official number, 212682, tonnage, 3189, gross, 2011, net, built at Newcastle-on-Tyne, Eng., in 1890, was last documented in this office October 8th, 1914, and in that document, namely, a Permanent register No. 38, the following were cited as her only owners, viz: Standard Oil Company, incorporated under the laws of the State of New Jersey, and that no sale of said vessel has since been made.

Given under my hand and seal of this office, this 31st day of January, 1921. Hour and minute, 3:45, P. M.

John Farrell, Acting Deputy Collector.

Fee, \$1.00.

[fol. 335] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 12.

Permanent Register, No. 38.

Official No., 212682.

Letters, L. D. T. K.

Radio Call, K. S. I.

The United States of America,

Department of Commerce,

Bureau of Navigation

Duplicate

Certificate of Registry

Rebuilt at....., 1....	Measured:, 1....
Remeasured, 1....	Number of crew,..... 33

In pursuance of Chapter One, Title XLVIII, "Regulation of Commerce and Navigation," revised Statutes of the United States, as

*After names, addresses, and shares of owners are cited add "and that the following sales of said vessel have since been made."

amended by Sect. 5 of the Panama Canal Act & by the Act of Aug. 18, 1914, entitling the vessel to engage only in trade with foreign countries or with the Philippine Islands & the islands of Guam & Tutuila. This vessel shall not engage in the coastwise trade. David T. Warden of Upper Montclair, N. J., Agent under Act of June 24, 1902, having taken and subscribed the oath² required by law, and having sworn³ that "Standard Oil Company, Incorporated under the laws of the State of New Jersey, is the only owner of the vessel called the "Llama," of New York, N. Y., Hailing Port, Bayonne, N. J., U. S. A., whereof Thomas J. Wheeler is at present master, and is a citizen of the United States, and that the said vessel was built in the year 1890, at Newcastle-on-Tyne, England of⁵ steel as appears by⁶ copy of register issued to said vessel [fol. 336] under the name of "Brilliant" at Hamburg, Germany on May 22, 1906, and now on file in this office; and⁷ said register having certified that the said vessel is a steamship; that she has two decks, three masts, a plain head, and an elliptic stern; that her register length is 318.5 feet, her register breadth 42 feet, her register depth 29.5 feet, her height — feet; that she measures as follows:

	Tons	100ths
Capacity under tonnage deck ⁸	3022	53
Capacity between decks above tonnage deck.....	....	..
Capacity of inclosure on the upper deck, viz: ⁹ Fore-castle, 41.82; bridge, 46.49; poop, —; break, —; houses—round, —; side, —; chart, —; radio, —; excess hatchways, —; light and air spaces, — ..	166	67
Other spaces, 78.36.	—	—
Gross tonnage	3189	..
Deductions under Section 4153, Revised Statutes, as Amended		
Crew space, 98.75; Master's cabin, 10.67; Steering gear, —; Anchor gear, —; Boatswain's stores, 44.15; Chart house, 3.87; Donkey engine and boiler, —; Radiohouse, —; Storage of Sails, —; Propelling power (actual space, ¹⁰ —), 1020.55...		
Total deductions	1177	99
Net tonnage	2011	..

The following described spaces, and no others, have been omitted, viz:¹¹ —.

and the said¹² — — having agreed to the description and ad-measurement above specified, according to law, said vessel has been duly registered at this Port.

[fol. 337] Given under my hand and seal, at the Port of New York, this 8th day of October, in the year one thousand nine hundred and fourteen.

F. Cheney, Deputy Naval Officer. (Place for Seal of Naval Officer.) E. J. Donahue, A Deputy Collector of Customs. (Place for Seal of Collector.)

(Countersigned, rubber stamp:) Eugene Tyler Chamberlain, Commissioner of Navigation.

¹Insert name and address of person by whom oath or affirmation is made.

²Substitute "affirmation" when necessary.

³Substitute "affirmed" when necessary.

⁴If there is only one owner, write "he" or "she;" if more than one owner, write "he (or she) owning" and the part owned, "together with" followed by the names of other owners, their shares and addresses.

⁵Write "wood," "iron," "steel," or as required.

⁶Cite surrendered marine document or write "certificate of ———, builder," if first document of a new vessel.

⁷Write "said register," "said enrollment," or "said license." In the first document of a new vessel, give the name and title of the measurer.

⁸Name and give tonnage of each compartment in double bottom and of each peak tank used other than for water ballast which is included herein.

⁹Carry total of all inclosures to spaces at end of next line.

¹⁰Insert tonnage representing actual machinery space used in ascertaining propelling power.

¹¹Name and give tonnage of each space exempted.

[fol. 338] ¹²In the first document of a new vessel, give the name of the person countersigning certificate of measurement.

Office of Collector of Customs,

District of New York,

Port of New York

BB.

I hereby certify the within to be a true copy of the original on record in this Office.

Given under my hand and seal this fifteenth day of November, 1916.

John Farrell, Acting Deputy Collector of Customs. (Seal.)

Fee, 20 cts.

NC:JDG.

Port of New York, May 12, 1915.

Thomas E. Clinch having taken the oath required by law, is at present master of the within-named vessel, in lieu of Thomas J. Wheeler, late master.

John Farrell, Dep. Collector of Customs.

[fol. 339] Department of Commerce, Bureau of Navigation. Permanent (permanent or temporary). Duplicate Certificate of Registry No. 38 of the steamship called the Llama, of New York, N. Y. 3189 gross, 2011 net. Issued at the Port of New York, October 8th, 1914.

[fol. 340] IN UNITED STATES DISTRICT COURT

EXHIBIT L. 13.

S/S "Llama"

		Claim of s/s "Wico"
Hull	\$115,000.00	\$1,457.48
Freight	44,686.82	566.36
Cargo	67,000.00	849.14
	<u>\$226,686.82</u>	<u>\$2,872.98</u>
Percentage, .0126737.		

IN UNITED STATES DISTRICT COURT

EXHIBIT L. 14

S/S "Llama"

		Claim of British admiralty
Hull	\$115,000.00	\$177.52
Freight	44,686.82	68.98
Cargo	67,000.00	103.42
	<u>\$226,686.82</u>	<u>\$349.92</u>
Percentage, .0015436.		

Copy

Wr. 2. (Cut of Seal.) Page —

Examination on Oath Instituted by the Receiver of Wrecks at the
Port of Kirkwall

Issued by the Board of Trade

In pursuance of the 517th Section of the Merchant Shipping Act, 1894, 57 and 58 Victoria, Cap. 60, at Kirkwall this 2nd day of November, 1915, in presence of Magnus Flett, Deputy Receiver of Wreck at Kirkwall—

1. Names of deponent at full length.

1. Compeared Thomas Edward Clinch being solemnly sworn and examined deposed as follows; namely,

2. State whether deponent is "master," "mate," &c., of the ship; the name of the ship; and particulars as to her tonnage and official number.

If the ship is a steam ship, the fact should be stated as well as the nominal horse power of the engines, and whether paddle or screw.

2. That he is Master of the ship "Llama" stem-screw of the port of Bayonne, New Jersey, U. S. A., of the register tonnage of 2,011 tons, her official number being —

3. Names and residence of owners.

3. That the said ship is owned by Standard Oil Coy residing at 26 Broadway in the City of New York.

4. Particulars of rig, build, age, and class of ship.

4. That the said ship is rigged as a tank steamer that she was built of Iron at Newcastle on Tyne in the year 1890, and that she is classed in German Lloyds as A-1 for four years from October 1915.

[fol. 342] 5. Particulars as to the number of hands composing crew, and as to the certificate of the deponent.

5. That the crew consists of 37 hands, including deponent; that the deponent's certificate is a certificate of Competency as Master, and is numbered (American).

6. Particulars of cargo, and shippers and consignees.

6. That the said ship had on board a cargo of gas oil in bulk and in barrel of the weight of 6,600 tons in bulk and 52 tons in barrel shipped by Standard Oil Coy of New York and consigned to Copenhagen of —

7. Number of passengers on board.

NOTE.—If the wife and children of the master or of any officer of the ship were on board, the fact should be stated.

7. That the said ship had on board in addition to the cargo aforesaid no passengers.

8. Draught of water at time of sailing.

8. That the draught of water of the said ship was Twenty-four feet six inches forward and 26 feet — inches aft.

9. Date and hour of sailing, and state of tide, weather and wind.

9. That the said ship proceeded from New York on her intended voyage as named below, on the 13th day of October last past, at midnight, the tide at the time being unknown, the weather fine, and the wind blowing light breeze from the south east.

10. Any statement as to the condition of hull and cargo of the ship, or of her equipments, life saving appliances, &c., at the time of sailing.

10. That at the time of sailing as above the said ship was in perfect sea going condition in every respect, having just come from under a six weeks' repair and survey. Vessel was supplied with admiralty chart in deponent's opinion, about a year old.

[fol. 343] 11. Limits of intended voyage.

11. That the said ship was bound for Copenhagen in Denmark via Kirkwall.

12. Statement as to the voyage previous to the casualty.

12. That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. Deponent decided to lie off land until daylight.

13. Particulars of the occasion of the distress of the ship, commencing with the date and hour and the state of the tide, weather, wind, and sea.

13. That on Sunday the 31st day of October at 8 a. m.; the tide at the time being ebb, the weather slightly hazy and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. The vessel was holding a course South

(Written in:) Omission in copying. M. F., Dy. Re. Wr. Magnetic which was considered safe by deponent and by the naval officer of the Prize Crew. Vessel was proceeding at full speed—eight knots, when about half a mile south-west of the Skerries which lie off Berskness Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast. The engines were put full speed astern without result.

[fol. 344] 14. Statement respecting the service rendered, if any.

14. That the vessel was assisted by two British torpedo boats, about 11.30 a. m. one of the wire hawsers broke and fouled the propeller. This rendered the engines of the vessel useless.

15. Such other matters or circumstances relating to the ship or cargo on board the same as the Receiver or Justice thinks necessary.

15. About 10 p. m. the vessel was swung completely round with the rock as a pivot under the forepart of the vessel. In deponent's opinion the vessel is badly holed under all the parts forwards off amidship. The vessel remains fast.

16. Loss on ship and cargo, and amount of insurance on ship, cargo and freight.

16. That the loss on the said ship is estimated by deponent at unknown pounds sterling, and on the said cargo at unknown pounds sterling, and that the ship was not insured except insurance against war risk, the cargo in unknown pounds sterling, and the freight in unknown pounds sterling.

17. Particulars of lives lost and saved, &c.

17. That in consequence of the stranding of the said ship no lives were lost, all, viz., master, 36 crew* and no passengers, being saved by an admiralty Tug, and subsisted on board that vessel from the vessel to Kirkwall. The following provisions, valued at unknown, were transferred from the wreck to the salving vessel crew's effects only.

18. Cause of the casualty.

18. That, in deponent's opinion, the cause of the casualty was a submerged and uncharted rock and it could not have been avoided.

[fol. 345] 19. That the above contents are in all respects correct and true to the best of deponent's knowledge and belief.

(Signed) Thomas E. Clinch, Deponent.

Sworn at Kirkwall this 2nd day of November, 1915, before me. (Signed) Magnus Flett, Dy. Receiver of Wreck.†

Certified a true and correct copy of original deposition.

Magnus Flett, Dy. Receiver of Wreck,

3rd November, 1915.

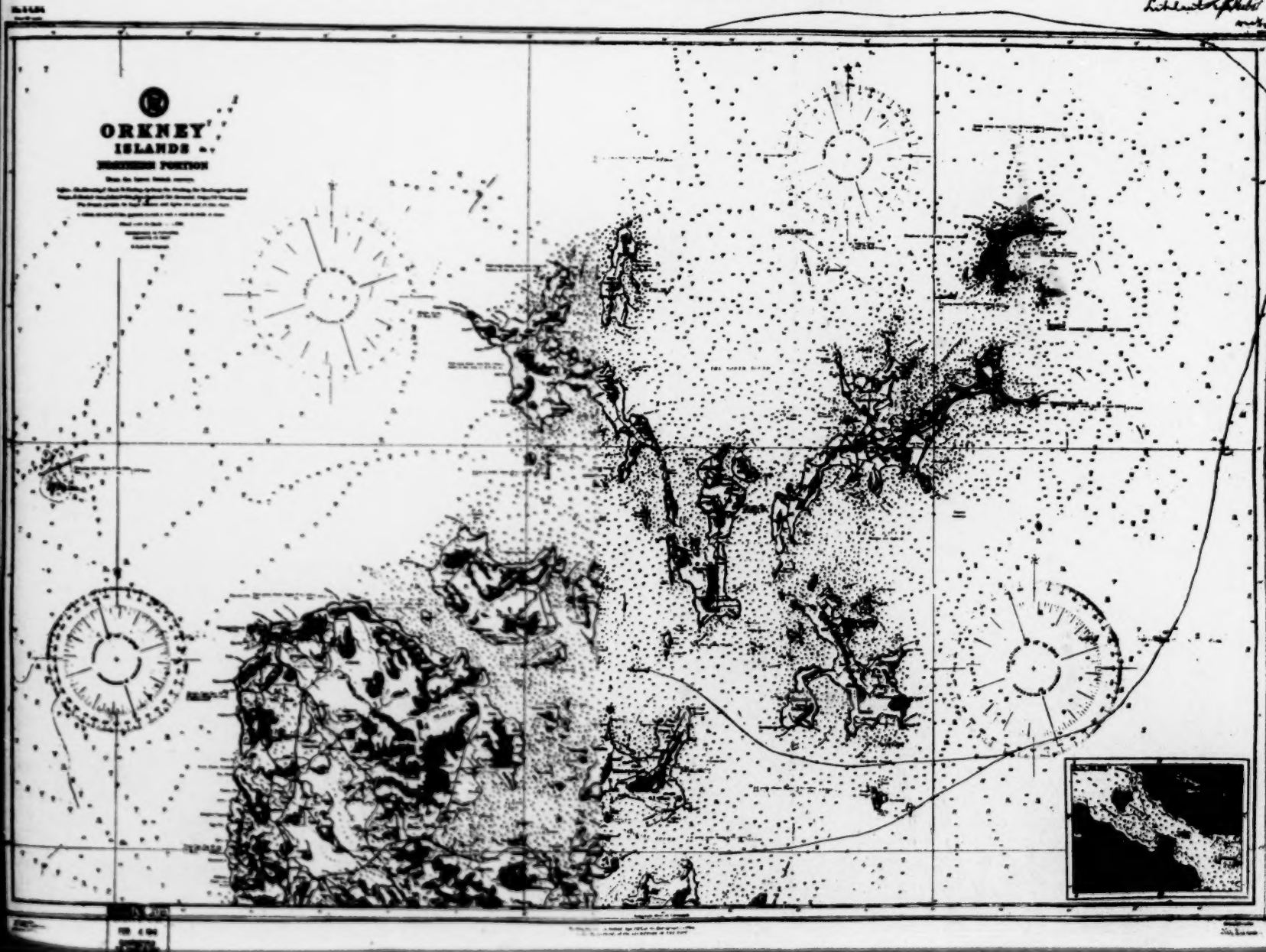
P. V. W. 6/— 246. C. Rim. Pl. Copy. N. Wr. 2. Port of Kirkwall. Name of Ship, Llama. Port, Bayonne, U. S. A. Date of Casualty, 31/10/15. Date when Deposition taken, 2/11/15. Date when copy sent to Board of Trade and to Lloyd's, 3/11/15. Amount charged, Fee, £1; expenses, nil.

(Here follow exhibits in evidence, marked side folio pages 345a, b, c.)

*In the number of the crew should be included all officers except the master.
†Obliterate the words that do not apply.

In United States District Court
Exhibit in Evidence

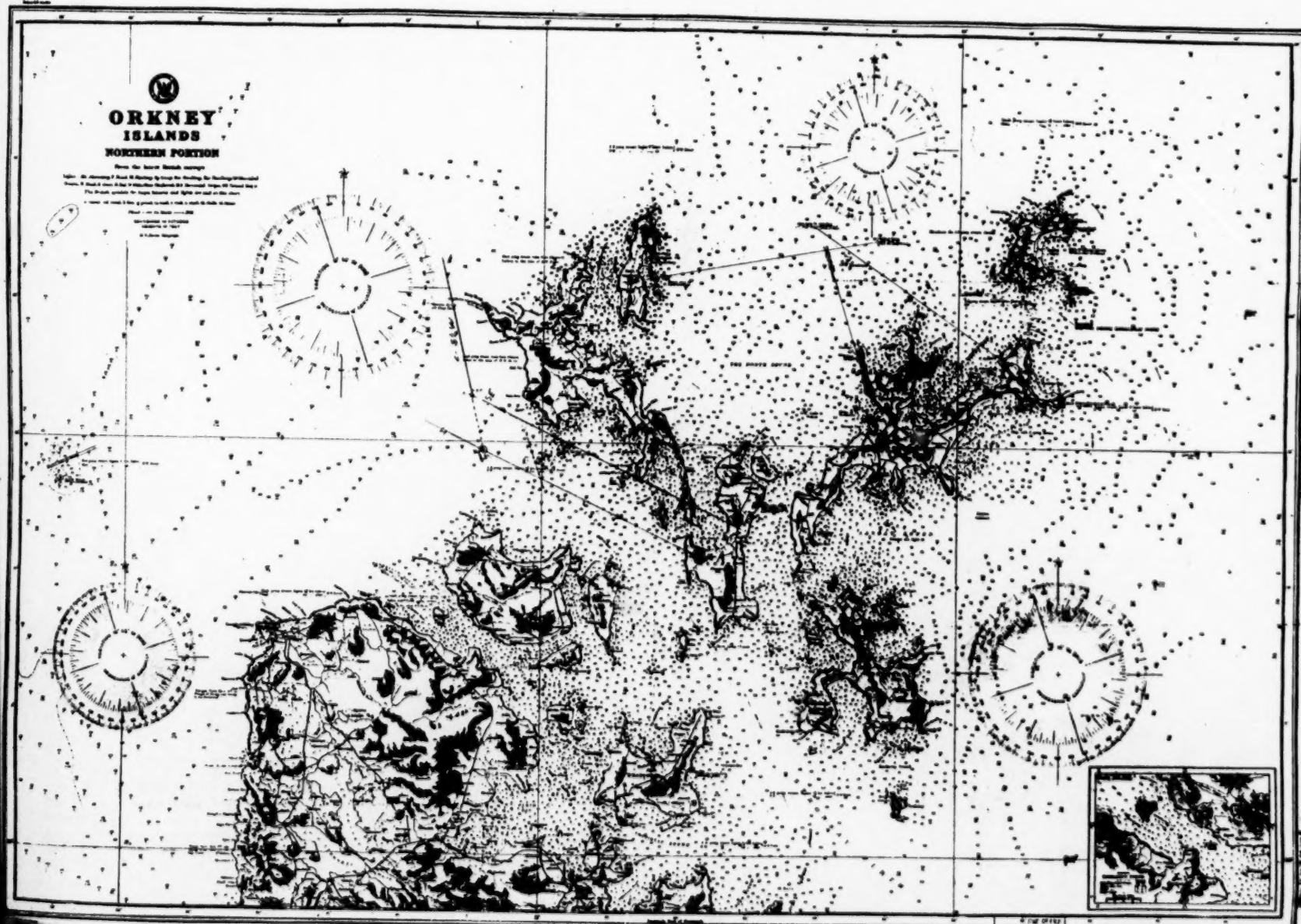
Lieutenant R. P. Butler



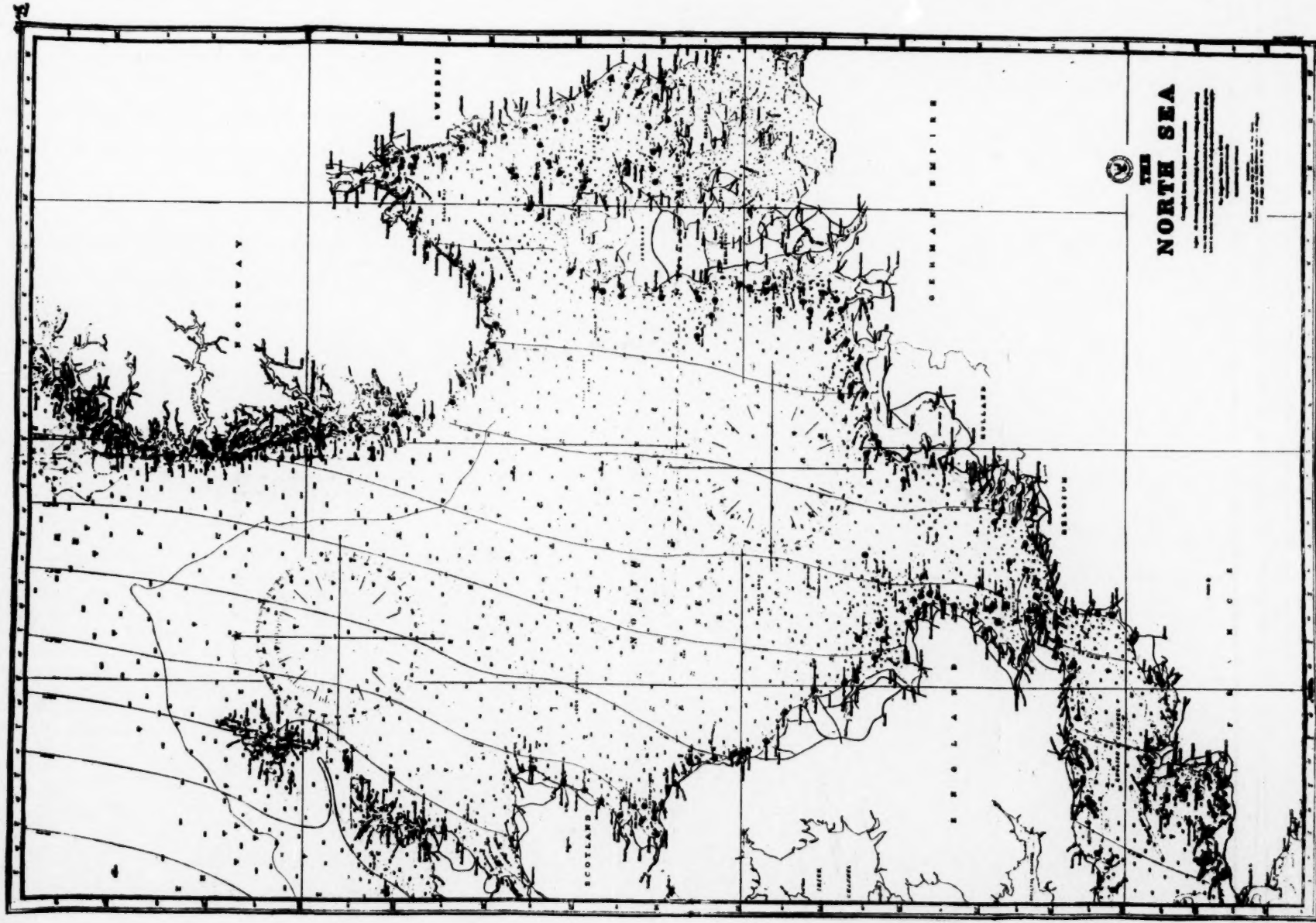
345b

In United States District Court
Exhibit in Evidence.

No. 4164



345c In United States District Court - Exhibit in Evidence



REPRODUCED FROM
NAVY DEPARTMENT
NAVY OFFICE

No. 1446

[fol. 346] UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE
THIRD CIRCUIT

UNITED STATES OF AMERICA, Appellant,

vs.

STANDARD OIL CO. OF N. J. Owner, etc., S. S. "Llama," Appellee

Appeal from the District Court of the United States for the District
of New Jersey

ORDER ASSIGNING JUDGE—Filed March 6, 1923

And now, to-wit: this sixth day of March, A. D. 1923, it is ordered that Hon. Charles L. McKeehan, District Judge, for the Eastern District of Pennsylvania, be, and he is hereby, assigned to sit in above case in order to make a full court.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 347] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

SUBMISSION OF CAUSE

And afterwards, to wit, on the sixth day of March, 1923, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, and Honorable J. Warren Davis, Circuit Judges, and Honorable Charles L. McKeehan, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the sixth day of July, 1923, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 348] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Buffington and Davis, Circuit Judges, and McKeehan, District Judge

OPINION—Filed July 6, 1923

BUFFINGTON, Circuit Judge:

X) In the Court below, the Standard Oil Company of New Jersey, in pursuance of authorizing legislation, filed a libel against the United States War Risk Insurance Bureau on two policies of war risk insurance on its steamship "Llama." On final hearing, that Court entered a decree adjudging the insurer liable for the loss of the steamer and from it the insurer took this appeal.

Inquiring as to the question involved in this case, we note that as the owners of the "Llama" assumed all marine risks and as she was lost by stranding, a marine peril, and as such stranding was caused by errors in navigations, also a marine peril, the question involved is whether the insured has shown that the proximate cause of the loss was not these marine perils or errors in navigation and stranding but was a war peril insured against, namely, "takings at sea, arrest, restraints and detentions of all Kings, princes and peoples, of what nation, condition or quality soever, and all consequence of hostilities or warlike operations."

1 The "Llama" sailed from New York for Copenhagen on October 14, 1915. She was routed "via Kirkwall," pursuant to a prior arrangement made by her owner, the Standard Oil Company, so that her documents could be examined. In pursuance thereof, and as had been done on a previous voyage of the "Llama," she was, on October 29, 1915, hailed and stopped by the British cruiser "Virginia," and boarded by a lieutenant and four men. After the examination of her papers, which showed the vessel was duly routed "via Kirkwall," the "Llama" proceeded, the lieutenant and his party remaining on board. He had been directed by the "Virginia" [fol. 349] to see that the "Llama" keep North of Scule Skerry and North Rona, well known landmarks, and not to pass between the islands at night.

Subject to these general directions, the captain of the "Llama," as would appear from the absence from the log of anything indicating a departure from his previous conduct, laid off, entered all courses and gave directions, the entries in the log being "6.59 Stopped by British cruiser in Lat. 58° .56 N. Long. 11° 58 W. 7.30 British naval officer boarded ship with prize crew. 7.31 Eng-aft speed ahead. 7.35 Received order from cruiser to proceed. * * * 8.10 Eng. full speed ahead. * * * 10.30 Hoisted ship's number to British cruiser." The log entries contain the usual recital by name of the ship's officers on watch and of the ship's

men on the lookout. Other than the above the log contains no entry or reference to the cruiser or of the officer and his men aboard the "Llama." The entry of the 30th records that on that night North Rona was reached, viz: "10.35 North Rona abeam dist. off 9'," where the "Llama" hove to for the night at the Noup Head. From Noup Head there were two courses to Kirkwall, one called the Fair Island passage, the other, which the "Llama" took, was called the Westray Firth. The proofs show that the Master of the "Llama" had taken this latter passage on the previous voyage, and that he British officer on board had never taken it.

On the next morning while the "Llama" proceeded through the Westray Firth, where there was an open leaway of some four miles, she struck a submerged but charted reef and stranded. The time was daylight, and the sea conditions, as shown by the log, were "moderate sea, clear;" and the entry in the log "9.07 Struck a reef in Westry Firth."

On November 13, 1915, Clinch, the Master of the "Llama," appeared before the American Consul at Dundee, Scotland, and made oath to a marine protest of the loss, wherein his account thereof was given, as follows:

"The said ship proceeded on the said intended voyage as above stated until she reached a point about 400 miles Westward of the Orkney Islands, where she was boarded by a British Naval Prize Crew on the morning of October 29th, Noup Head of Westray was made about four miles to Northeast about 8 P. M. On the evening of the 30th the Master decided to lie off land until daylight; that on Sunday the 31st day of October, 1915, at 8 A. M., the tide at the time being ebb, the weather slightly hazy, and the wind in the southerly direction, blowing gustly and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fair way down the firth. The vessel was holding a course South magnetic which was considered safe by the Master and by the naval officer in charge of the prize crew. The vessel was proceeding at full speed 8 knots, when about half mile southwest of the Skerries, which lie off Fersness, Westray, the vessel suddenly grounded on a submerged and uncharted rock and remained fast."

In addition to the Master, John Caldwell, First Assistant Engineer, [fol. 350] and the carpenter and some seamen, all unnamed, joined under oath in this account of the ship's mishap.

On November 2, 1915, the Master appeared and made statement under oath, at a hearing had by the Deputy Receiver of Wrecks, held in pursuance of the British Shipping Act of 1894, wherein he stated:

"12. That the said ship proceeded on the said intended voyage as above stated until she reached a point about 600 miles westward of the Orkney Islands when she was boarded by a British naval prize crew on the morning of October 29th. Noup Head of Westray was made about four miles to northeast about 8 p. m. on the evening of the 30th. Deponent decided to lie off land until daylight."

13. That on Sunday the 31st day of October, at 8 a. m., the tide at the time being ebb, the weather slightly hazy and the wind in the southerly direction blowing gusty and variable with a heavy swell from the southeast, the said ship entered Westray Firth to make a fairway down the Firth. The vessel was holding a course South magnetic which was considered safe by deponent and by the naval officer of the Prize Crew. Vessel was proceeding at full speed—eight knots, when about a mile southwest of the Skerries, which lie off Berskness Westray, the vessel suddenly grounded on a submerged and unchartered rock and remained fast. The engines were put full speed astern without result.

* * * * *

18. That, in deponent's opinion, the cause of the casualty was a submerged and uncharted rock and it could not have been avoided."

From the above extracts it will appear that the loss of the "Llama", as made out by contemporaneous written statements of her log and officers, was due to a marine peril, to-wit: "a submerged and uncharted rock," and that when the ship was struck, the vessel was holding a course "which was considered safe by the Master", and that "it could not have been avoided". The physical fact being that the boat was lost by reason of its stranding, and stranding being prima facie a marine peril, it follows the burden is on the ship's owner to show that the stranding was caused by one of the war risks insured against as heretofore quoted; *Monroe v. War Risk Ass'n*, 34 Times L. R. 331. This burden, the Court below was of opinion the insured met, finding in substance that at the time of the stranding the "Llama" was controlled and navigated by the British lieutenant, who boarded her.

After a study of the proofs, we reach a conclusion different from that of the Court below, and that in the light of the facts and law, the libel should be dismissed.

In reaching that conclusion we start, not only with the prima facies against the "Llama" arising from her loss by a marine peril, but with a heavy burden of proof arising against her by reason of the fact that no contention, assertion or even suggestion was made by the captain, when he was called upon to account for the stranding, of any dominating control by the British officer. The silence of the log on that point is highly significant. If control of his [fol. 351] ship was taken away from the captain; if its courses were being determined by an alien officer; if its navigation was being directed; if a log is, as its sphere is, to record the history of the voyage, why should it be silent on such an all important thing as the control and navigation of the ship; why should it continue to be written just as it had been written before? Indeed, if we gather an account of subsequent events solely from the log entries, we would not know whether the British lieutenant remained on board, for after the log's entry that he boarded the vessel, there is not only no

statement of his remaining aboard, but the subsequent entries, viz: "Received orders from Cruiser to proceed" and "Hoisted ship's number to British Cruiser", show that all the directions the captain felt worth while for entry in the log referred to those received from the cruiser and not from the lieutenant. Seeing then that both in the comparative privacy of the log and before any situation arose suggesting the recording of evidence on the subject of alien control of the ship, no entry was made indicating such control, we turn to November 2, 1915, when the next evidential statement was made by the captain. The "Llama" had been lost, and he then appeared before the British official, empowered by the British Government (See Sec. 517 of Merchant Shipping Act 1894) to investigate the disaster. Here every circumstance; the opportunity of clearing himself from all blame and responsibility for the stranding; the obligation of his oath, impelled the captain to give a truthful account of how and why the stranding took place. Presumably moved by the two considerations of self-exculpation and truth disclosure, and knowing, as the statement shows he did, that the "Llama" carried insurance against war risks but none against marine, the captain made no statement that he or the vessel was under compulsion, but on the contrary states that her course was one which both he and the British officer considered safe; that she grounded on an uncharted rock and in answer to the inquiry of "the cause of the casualty", he stated that in his opinion "the cause of the casualty was a submerged and uncharted rock and it could not have been avoided." We have here then the deliberate, sworn statement of the captain exculpating himself on the ground the "Llama" had struck an uncharted rock while sailing on a course which he approved and which had also the approval of the British officer, a clear case of loss from a marine peril, and with no suggestion of loss from a war peril and this statement made with knowledge that the vessel had no marine peril insurance, but had war peril insurance. Coupled with the significant absence from the log of any suggestion of control of the [fol. 352] "Llama" by the British officer, the sworn statements made by the captain in this casualty inquiry, alleging the loss was a marine one and with no suggestion of control by the British officer, we have a case of contemporaneous and evidential statements of such convincing nature as made the case one where a contrary state of facts, later set up, should be not only of the most convincing character as to their truth but also explanatory of the silence of the captain when every surrounding circumstance called on him to then make such a statement as he now makes for the libellant. ✓

It is said in his behalf that the captain was averse to making any statement before the British tribunal implicating the British officer by showing the latter was directing the course of the "Llama" and was responsible for her stranding. To this, an answer would be that if the captain's statement described the true situation, there was no call to shift the blame from him to the British officer, for that statement placed the blame not on faulty navigation of either but on the fact of a submerged and uncharted rock. But the case did

not stop with his statement made before an alien official, for on November 13th, the Captain, with an officer and members of the crew, appeared before the American Consul at Dundee and again, under oath, entered a marine extended protest wherein he made no assertion that the ship was under the control of the British officer but, after stating, as he had done in the wreck inquiry, that on the night before "the master decided to lie off the land until daylight" the "Llama" proceeded the next morning on her course and that when she stranded, "the vessel was holding a course South magnetic which was considered safe by the master and by the naval officer in charge of the Prize Crew", he alleged she "suddenly grounded on a submerged and uncharted rock."

If these several statements be accepted as a true and full account of the stranding, we have here a loss from a marine peril and resulting from following a course in which both the captain and the British officer concurred. They suggest no dominating control, no superseding of the captain by the British officer, but on the contrary, the selection of the course by the captain and the justification of that selection by the concurrence of the British officer and so regarded we have the case of a peril and a loss due, not to a war risk, but to a marine peril, for the concurrence of the two men in the course was not something done by stress of war, but at most by the concurrent mistake of two men who were attempting to safely navigate a ship through an open fairway but who mistakingly stranded [fol. 352½] her on a submerged, unknown reef. Taken at its most, the captain thought he was right, the British officer thought the captain was right, but in point of fact, both were wrong. There was nothing partaking of war in the ship going on a submerged, uncharted rock owing to the miscalculation of those directing her course and therefore the cause of the loss, viz: the stranding, the marine character of the peril, is not affected by the one directing the course, whether his or their uniforms were those of a mariner or a naval officer. The stranding was the dominant casual factor of the loss; and that stranding, if the contemporaneous evidence as to the loss be accepted, resulted from the conjoint, but mistaken, navigation of the captain and the British officer.

Accepting then, these contemporaneous statements by the captain of the circumstances as correct, his testimony given nearly six years after to the effect that the navigation of the ship was taken out of his hands by the British naval officer and the course over the submerged reef was one selected by the latter and the ship constrained to follow it without his, the captain's concurrence, is not convincing. There is no explanation by the master of his change of position or as to why he did not enter in the log or in the wreck inquiry or consular protest, assert or even suggest, what he now contends, namely, that the British officer was navigating the "Llama" and stranded her on the reef. Standing alone, these circumstances are such as to cause us to question his later testimony, but when to this is added the fact that the captain had taken the Llama through the Westray Firth before but the British officer had never been through it; that the captain admits that when the officer came aboard, he made no state-

ment that he himself was to navigate the vessel or give any instructions to his own men that they were to do so; the captain's self-contradiction on the stand in testifying first, that he had not been court-marshalled and later admitting that he had been court-marshalled for drunkenness, and in further view of the testimony of the British officer that he did not oust the captain's control over the navigation of the ship, we are clear that the libellant has not met the burden resting upon it, of showing that the *causa causans* of the loss was a war risk and not a marine one.

We may refer to other proofs in the case supporting both sides, all of which have had our attention; the testimony of Jansen, the third officer of the "Llama" in support of the captain's later version; [fol. 353] the absence or failure to account for the loss of the chart books in which there might have appeared or been wanting the figuring of courses in confirmation or contradiction of the captain's testimony that the British officer did the charting; and of the fact that while Caldwell, the first assistant engineer, the carpenter and some seamen, were present and were sworn before the Consular inquiry and joined in the account of the loss as then stated by the captain, none of them were called or their absence accounted for in the present proceeding.

The view we have taken of the situation, namely: that the libellant has not satisfied us that the "Llama" was being navigated by the British officer, when she stranded, renders it needless to refer to the many authorities cited, all of which have had our careful examination.

The cause will therefore be remanded to the Court below with directions to vacate its decree and dismiss the libel, the libellant bearing the costs in this Court and in the Court below.

[File endorsement omitted.]

[fol. 354] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Before Buffington and Davis, Circuit Judges, and M. Keehan, District Judge

DISSENTING OPINION—Filed Aug. 3, 1923

DAVIS, Circuit Judge (dissenting):

I am unable to subscribe to the conclusions of my colleagues in the foregoing opinion. The tanker, "Llama", sailed from New York for Copenhagen, Denmark, October 24, 1915. She was, according to her chart, to stop at Kirkwall, Scotland, as required by the British Government. When about four hundred miles westward of the Orkney Islands on October 29, 1915, she was hailed by the British Cruiser,

"Virginia", and was boarded by a British prize crew or armed guard of five persons under the command of Naval officer, Lieutenant Cox. From that point the "Llama" proceeded toward Kirkwall through Westray Firth and when in the vicinity of Skea Skerries on October 31st, she struck a submerged rock and became a total loss.

The question of first importance, because the determination of this case depends upon it, is, under whose direction or authority the navigation of the "Llama" proceeded from the time she was boarded by the prize crew. The learned trial judge found as a fact that she was navigated under the direction of Lieutenant Cox who selected the route through Westray Firth and directed her courses. If this is a fact, the law is clear that the United States, operating through the Bureau of War Risk Insurance, which insured the vessel against "takings at sea, arrests, restraints and detentions of all kings, princes and peoples, of what nation, condition, or quality soever, and all consequences of hostilities or warlike operations, whether before or after declarations of war", is liable for the loss and the taking or restraint, under the authorities, was the proximate cause of the accident and consequent loss. *Mogour v. New England Marine Insurance Co.*, 16 Federal Cases 483, No. 8,961; *Muller v. Glove and Rutgers Fire Insurance Company*, 346 Fed. 759. If this be not the fact and the prize crew under Lieutenant Cox in no way interfered with the control of the ship or the selection of the route and courses, it is [fol. 355] likewise clear that the United States is not liable for the loss.

This court has concluded that the learned District Judge erred in finding the above facts. It has found that as a matter of fact the British Lieutenant did not interfere with the control of the vessel nor determine her route nor courses to Kirkwall, but that these were determined wholly by the Captain of the vessel. This conclusion is based on the testimony of Lieutenant Cox and the silence of the Captain as to the control of the vessel in the log, the consular protest and the wreck inquiry. Lieutenant Cox testified that he had nothing to do with the management of the vessel or the selection of her route or courses. The control of the vessel and the selection of the route and courses were subjects that did not properly or necessarily arise in the log, the protest or wreck inquiry. It was admitted that Lieutenant Cox did direct the first course of the "Llama" after he boarded her, but no mention is made of that fact. It is, therefore, not strange that no mention is made of the route and other courses. The settlement in the log, protest and wreck inquiry of the questions of the control of the vessel and determination of the route and courses would throw no light on the physical cause of the accident. Printed forms are used indicating in the margin the information desired and there is nothing in those forms properly calling for the settlement of this question, or the discussion of this controversy therein. At most, the conclusion of the court that the assumption of control by Lieutenant Cox, if a fact, would necessarily appear in the log, protest and wreck inquiry, is an unnecessary inference from silence under circumstances rendering it uncertain as to whether or not the Captain should then and there have spoken.

The protest and inquiry do, however, contain this statement which indirectly throws light on the question: "The vessel was holding a course south magnetic which was considered safe by the master and by the Naval officer in charge of the prize crew." This, at least, shows joint control and is very significant when taken in connection with the purpose of boarding the vessel by the armed guard, the statement of Lieutenant Cox that he had power and authority to correct anything suggested by the Captain which did not meet his approval, that he had four armed men to assist him and that nothing was done in navigating the vessel of which he or his assistants did not know and to which they did not assent.

Further, there are two routes to Kirkwall: one through the Fair Island Channel and the other through the Westray Firth. Who selected the route through Westray Firth? This court in its opinion said: "The proofs show that the Master of the 'Llama' had taken this latter passage on the previous voyage and that the British Officer [fol. 356] on board had never taken it." This is not the whole story. The undisputed proofs show that the master, who had made many trips, was taken to Kirkwall on the previous trip by a British prize crew or armed guard through the Westray Firth which was the usual route traveled by British prize crews; that on every trip before that, the Captain had gone through Fair Island Channel and on this very trip the "Llama" was routed through the Fair Island Channel. After the Naval officer had boarded the vessel and examined the papers, he said: "I then went on the bridge and signaled my investigation to the cruiser (Virginia) who gave me orders to proceed with the ship to Kirkwall." He further said: "I told him (the captain) that the orders had come through as to the course to steer." The route through Westray Firth was about fifty miles shorter than the route through Fair Island Channel and besides it was reported that there were submarines in Fair Island Channel but none in Westray Firth. Lieutenant Cox further testified that it was his duty to take the "Llama" to Kirkwall "by the safest route" and "with all dispatch." The instructions of the British Admiralty to officers in charge of armed guards upon boarding vessels contained the following: "The master should be given the special route to be followed." The Captain and Christian P. Jensen, third mate of the "Llama," unequivocally testified that the Naval officer directed the vessel through Westray Firth and determined the courses but that the vessel had been routed through the Fair Island Channel. The learned District Judge said:

"This conclusion (the assumption of control and determination of the route by Lieutenant Cox) is arrived at not only because the weight of the evidence seems to justify it, but also because the version of the master and third officer of the "Llama" seems to me to be more probable. The war between Great Britain and Germany was then in progress and German submarines were plying the open sea beyond the Fair Island Channel. Although this was a neutral vessel carrying a non-contraband cargo to a neutral port, those in control of a German submarine would undoubtedly have evinced con-

siderable interest upon discovering a neutral vessel loaded with oil in the control of a British armed crew, and it seems highly improbable that the possibilities of this submarine peril were overlooked by the young lieutenant at the time the intended course into Kirkwall was discussed by him with the master."

So far as inferences are to be drawn from facts and indirect testimony, they are in perfect harmony with the facts found below. The conclusions really depend upon the veracity of Lieutenant Cox on the one side and the Captain and Jensen on the other. When Jensen testified, he was the Chief Officer of the "Agememnon", in the employ of the United States, and if he had any bias whatever it would have been in favor of the respondent. Therefore, his testimony is entitled to great weight and should not be set aside by inferences drawn from silence. There is no question about the fact that Lieutenant Cox was the absolute master of the vessel. He admits it and everybody on the vessel knew it. He testified that he did not exercise his mastery over the vessel, but it seems to me that, [fol. 357] notwithstanding his denials, his own statements, taken in connection with the positive testimony of others, together with the circumstances, unmistakably show that he did, and that the conclusions of the learned District Judge were in accordance with the truth and should be affirmed.

[File endorsement omitted.]

[fol. 358] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

Appeal from the District Court of the United States for the District of New Jersey

JUDGMENT—Filed July 9, 1923

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby reversed, and the cause remanded to the said Court with direction to dismiss the libel. The libellant to bear the costs in this Court and in the Court below.

Philadelphia, July 6, 1923.

Per Curiam.

Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 359] IN UNITED STATES CIRCUIT COURT OF APPEALS

CLERK'S CERTIFICATE

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of United States of America, respondent-Appellant, vs. Standard Oil Company of New Jersey, Owner, etc., Steamship "Llama", Libellant-Appellee, No. 2944, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 30th day of August in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of United States Circuit Court of Appeals, Third Circuit.)

[fol. 360] WRIT OF CERTIORARI AND RETURN—Filed Nov. 24, 1923

UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which The United States of America is appellant, and Standard Oil Company of New Jersey is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the District of New Jersey, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, [fol. 361] do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-sixth day of October, in the year of our Lord one thousand nine hundred and twenty-three.

Wm. R. Stansbury, Clerk of the Supreme Court of the United States.

[File endorsement omitted.]

[fol. 362] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

It is hereby stipulated, consented and agreed that the certified transcript of record now on file in the office of the Clerk of the Supreme Court of the United States in the above entitled action shall be taken as the return of the Clerk of the United States Circuit Court of Appeals for the Third Circuit to the writ of certiorari granted and issued herein by the said Supreme Court of the United States on the 26th day of October, 1923.

Dated October —, 1923.

James M. Beck, Solicitor General, Proctor for Appellant.
Kirlin, Woollsey, Campbell, Hickox & Keating, Proctors
for Appellee.

[File endorsement omitted.]

[fol. 363] IN UNITED STATES CIRCUIT COURT OF APPEALS

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original Stipulation of Counsel for Return to Writ of Certiorari in the case of United States of America, Appellant, vs. Standard Oil Co. of New Jersey, Appellee, No. 2944, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 23rd day of November, in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-eighth.

Saunders Lewis, Jr., Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of United States Circuit Court of Appeals, Third Circuit.)

[File endorsement omitted.]